INTERNATIONAL CONTROL OF AVIATION

BY KENNETH W. COLEGROVE

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INTERNATIONAL CONTROL *of* AVIATION

By KENNETH W. COLEGROVE
Professor of Political Science,
Northwestern University

WORLD PEACE FOUNDATION
BOSTON, MASSACHUSETTS
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INTERNATIONAL CONTROL OF AVIATION

By Kenneth W. Colegrove

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I. THE PROBLEM OF INTERNATIONAL AVIATION

GREAT mechanical inventions promote world-wide communication and make modern life rich and varied. At the same time they add to the complexity of international relations. The last several centuries have witnessed a struggle for freedom of the seas. In recent years, the railroad, the telegraph and telephone, wireless telegraphy, the submarine, the dirigible and the airplane have increased the necessity for universal cooperation and regulation. Finally, to-day there has appeared a new international competition, a rivalry for the control of air routes, quite as energetic as the great struggle to control the seas.

While the development of commercial aviation is a matter of only the last few years, nevertheless a notable amount of conventional law and international machinery has appeared, and there are indications that this development will go even further. It has been deemed that the dangerous elements of commercial rivalry can be largely eliminated and the growth of foreign traffic promoted by a timely enhancement of interstate cooperation in the régime of the air.

The new problem of international regulation may be studied in three phases. One phase concerns the regulation of aircraft in the course of interstate journeys. The second includes the diplomatic questions that arise from the development of air-

lines and manufacture of aircraft by governments as a means of promoting their trade, colonial expansion and national defense. A third phase concerns the regulation and limitation of aircraft as a weapon of war.

Origin of Aircraft Regulation

The first phase, regulation of international air traffic, takes its origin from the diversity of national laws. An airplane owned by British subjects and registered under British laws, while it is flying over British territory, is amenable to British rules regarding airworthiness, pilot licenses and other matters. But when this airplane crosses the English Channel and enters French jurisdiction it is amenable to French law. The air rules of France may not coincide with the rules of Great Britain, and this dissimilarity may be the source of endless inconvenience.

In the realm of air law, national legislation preceded international legislation. Indeed, national regulation began at an early stage in the history of aviation—an art which has been particularly subject to what Emerson calls the human passion for laws. It seems as if legislators feared a sinister element in the navigation of the air, born of ancient superstition, and sought to safeguard the people from some diabolical power attacking the human race from the heavens. In 1782, after centuries of speculation as to the ability of man to fly, the brothers Montgolfier, at Avignon, proved that a silk bag, laboriously filled with hot air made by a fire of sticks, would rise in the sky and float with the wind. A year later, a French physicist substituted for hot air "inflammable air" or the newly discovered hydrogen, made in crude fashion by pouring a quarter of a ton of sulphuric acid on half a ton of iron filings. This contraption, after being launched from the Champs de Mars, rose a thousand feet and was carried out of sight: finally, it fell 15 miles from Paris, much to the consternation of peasants who attacked the fearful demon with pitchforks, and dragged it from the end of a

horse's tail until naught but shreds remained. Another year later, the first experiment of carrying passengers by balloon was successfully carried out in the Bois de Boulogne. Legislation almost immediately followed. In 1784, the lieutenant-general of police in Paris published a decree forbidding balloon ascents without police authorization.[1] In 1819, the prefect of the Seine prohibited the use of balloons filled with hot air, required that all balloons be equipped with parachutes, and forbade all ascents until after the farmers' crops were harvested. Similar early legislation is to be found among the police decrees of other states, both in Europe and America.

In like manner, police regulations promptly followed the development of the airplane, and even preceded it. The long contest to conquer the air with an aerial screw, which began with Leonardo da Vinci, saw realization in 1903 with the experiment of the Wright brothers at Kitty Hawk. By 1909, the airplane driven by motor had advanced so far that Blériot was able to fly across the English Channel; and in 1919, Alcock and Brown, in a Vimy bomber, spanned the Atlantic. Meanwhile, in nearly all countries where air navigation developed, the airplane was not only subject to many of the regulations concerning balloons, but also to special legislation regarding licenses to fly and damages for injuries inflicted by accidents.

It is not to be assumed that the national legislation was unnecessary or unduly restrictive. The public is entitled to protection against ignorant, careless or wilful pilots and aircraft owners whose actions might bring destruction of life and property. Few will deny the wisdom of the state in requiring aircraft to be inspected in order to test their airworthiness, to be registered in order to establish their ownership and insure the responsibility thereof, and to require pilots to be examined and licensed in order to guard citizens

[1] Compare *Abonnement des Edits et Arrests pour la Ville de Paris et Toutes les Provinces et Villes du Royaume, Franc de Port* (Paris, 1885).

from the danger of inexperienced and negligent pilots. But in the fifty-odd countries having legislation on aviation great diversity of regulations soon appeared—a diversity which became inconvenient as soon as airplanes crossed the boundary lines of their native states.

The Movement for International Codification

Even before the invention of the motor-driven airplane, while balloons were the only means of air traffic, the question of international codification of aerial law engaged the attention of farseeing jurists. In general, it may be said that the jurists have emphasized the fact that national legislation should not retard the development of the marvelous invention of flying, nor lay down hide-bound rules that hinder progress toward international uniformity where similarity of rules is necessary or desirable. In the admirable words of Professor Garner,[1]

> Everyone will admit that the usage of the air as a means of traffic ought to be regulated not only to assure liberty of movement for all nations, but also to protect the subjacent states and their inhabitants from the dangers to which they are exposed by the flight of aircraft or by the landing of aircraft on their territory. It is also admitted that this regulation should be international as well as national. Everyone agrees that there is a considerable field which should be left to the regulation of the different states, governed by the traditions of these states and by local conditions. In brief, the task is two-fold. It is necessary to have an international code limited to general principles and to the points upon which a uniformity of legislation is desirable in the interest of international navigation. On the other hand, each state should have a national code regulating the points where uniformity of legislation is not essential. The rules of the national codes should include and conform with the rules of the international code, as well as extend and complete them.

[1] James W. Garner, "La Réglementation Internationale de la Navigation Aérienne" in *Revue de droit international et de législation comparée* (1923), 3rd ser., IV, p. 356.

In the various attempts to formulate an international code for air navigation many problems have arisen. Three of them which have offered peculiar difficulties include: (1) the extent of the control of a state over the air above its territory, (2) the definition of nationality as applied to aircraft, and (3) the dividing line between an international code and national codes.

The first problem has long attracted the serious consideration of jurists and statesmen. It is intimately related to the question of freedom of aerial traffic. On the one hand, there are jurists who like to hold that the atmosphere is a sort of fourth dimension, an oceanic envelope surrounding the earth, that nations border its earthly limit in the same way as they border the sea, that the air should be treated legally as the sea, and that no nation has jurisdiction over the atmosphere just as no nation has authority over the high seas. The conclusion of this theory is that the same freedom of the seas should extend to the air, and that aerial navigation should be unhampered.[1] On the other hand, the sweeping assertion of state sovereignty rests upon Roman law, as stated by the glossators: *Qui dominus est soli dominus est cœli et inferorum.* This refers not only to private property rights, but also, in the modern application, to the sovereignty of the state; it means that the state has absolute jurisdiction over the soil, and everything beneath it and all above it.

French jurists have taken the lead in the assertion of freedom of the air. At the sessions of the Institut de Droit International in 1906 and 1910, the doctrine of Fauchille—"the air is free; states have, in time of peace and in time of war, only the rights necessary for their self-preservation"—was adopted in preference to the Westlake resolution asserting complete state sovereignty.[2] In 1910, the International Con-

[1] Compare Paul Fauchille, *Domaine Aérien et le Régime Juridique des Aérostats* (Paris, 1901), p. 11-15; and *Traité de Droit International Public* (Paris, 1923-1925), vol. i, sec. 531; André Henry-Coüannier, *Éléments Créateurs du Droit Aérien* (Paris, 1929), p. 101-145.

[2] See below p. 42.

ference on Aerial Navigation at Paris with 18 Governments participating broke up because of an impasse between the French and the British, the latter resisting all efforts to open its borders indiscriminately to the aircraft of every nation.[1] The British aerial navigation acts of 1911 and 1913 placed foreign aircraft under the strictest supervision, conferring power on a secretary of state to exclude at his discretion all foreign aircraft.

There is little doubt that the British contention of absolute sovereignty is more in conformity with the present status of international development. This concept was positively asserted in the first international code for aerial law actually adopted, the air navigation convention of 1919, which provides in its first article: "The high contracting parties recognize that every power has complete and exclusive jurisdiction over the air space above its territory." It is probably not an exaggeration to say that no article of this convention is less liable to amendment in the near future than the one giving complete recognition to the absolute jurisdiction of the subjacent state over the atmosphere.

The second problem of international codification concerns the nationality of aircraft. Human experience has shown the necessity for registering the nationality of ships that sail the seas. Likewise it appears reasonable to insist that aircraft should be registered under a flag. But, what is to be the proper rule for nationality of aircraft? Should the nationality of the proprietor determine the nationality of the aircraft? What if the aircraft is owned by several proprietors of different nationality? What if the pilot is of different nationality than the owner? Long arguments have ensued over these questions. The convention of 1919 made nationality dependent neither upon the pilot nor upon the owners. According to Art. 6 of the convention, aircraft possess the nationality of the state on the register of which they are entered, and no aircraft can be registered by a state unless it

[1] See below, p. 48.

is wholly owned by nationals of that state, or if owned by a company, unless a large percentage of its directors have the same nationality.

In the third place, the movement toward international control has been confronted with the problem of determining what questions properly belong to international regulation and what should be left to the individual states. There is little objection to including in an international code the subjects of state jurisdiction, nationality of aircraft, admission to air navigation above foreign territory, general rules for avoiding collisions, for establishing signals and marks of identity, and legislation on responsibility of shipping companies. It is generally admitted that the registration of machines, inspection of machines for airworthiness, licenses for pilots, landing regulations and customs control should be left to national codes.

On the other hand, we may ask whether quarantine is a proper subject for international regulation or whether it should belong exclusively to the national domain? The airplane has made possible the rapid dissemination of disease. In 1929 an airplane from Africa landing in a French town brought a case of rabies. Humane considerations would seem to dictate a wide national authority to protect a community against the inroad of foreign ailments. But, on the other hand, an obstreperous state can use the quarantine to block international traffic completely. In the past few years the problem of quarantine has been one of the most difficult questions confronting the international control of the air.

The first international code of aerial law, the convention of 1919, and the Pan American convention of 1928 contain only a minimum of regulated subjects. It is expected that the future will see the scope of international regulation considerably widened.

International Rivalries

The second general phase of the problem of international control of aviation is concerned with the nationalistic rival-

ries of the "great powers" for supremacy in the air. The Great War demonstrated the effectiveness of the airplane and the dirigible as weapons of war. Indeed, a commonly expressed opinion at its close was that the control of the air would supplant sea-power. Hence, the rigid restrictions as to aviation which were laid upon Germany in the treaty of Versailles. Hence, the promotion of aviation as a means of national defense. Hence, also, the large subsidies granted by governments to their air companies.

Military advisers have pointed out that it is to the interest of a nation not only to maintain a large fleet of military planes but also to foster commercial aviation. Commercial equipment, if necessary, can be converted in part to military purposes. Factories which manufacture planes and motors in time of peace find it not difficult to make military planes in time of war. Pilots of commercial planes are already partly prepared for military service. Furthermore, it is to the military interest of every country to foster air-lines across foreign lands. In case of overseas possessions, these lines help to draw closer the bonds of imperial rule. At the same time, pilots who traverse foreign territory acquire experience in flying over courses that they may be compelled to pursue in time of war. Every national pilot who flies a commercial plane over another country in time of peace learns the lay of the land and the peculiarities of the winds; by his experience he adds to the offensive and defensive resources of his country in case of war with the other.

The airplane is also an empire-builder. Imperial progress has always demanded roads. Rome built its magnificent stone highways traversing Europe, Africa and Asia. Great Britain used the seas. To-day, France, Great Britain and Italy are deliberately promoting aviation as a means of uniting colonial possessions with the métropole. At the same time, the extension of airways to foreign lands enhances political prestige and advances commercial interests.

In the last ten years, France, Great Britain, Italy, Belgium

and the Netherlands have inaugurated colonial lines that reach to many of their overseas possessions, but are maintained at a loss. Operating costs are more than the revenue from passengers, mail and freight. Nevertheless, their existence is defended as sound policy. An analogy can be found in the enormous railroad lines constructed 70 years ago across the American continent, one of which was described in picturesque language as only two streaks of rust and a debt of millions. These railroads were built with government aid and reached far beyond the agricultural frontier. Nevertheless, they soon brought a tide of new farmers, promoters, miners and sportsmen who turned the desert into a profitable land. In the same way it is expected that the colonial air lines of France, Great Britain and Italy will attract attention to the colonial areas, bring sportsmen, travelers, prospectors, merchants and capitalists to these regions, and in time develop a complete exploitation of natural resources with the resulting growth of highly organized new communities.

These large air networks have introduced no new phase of imperialism. It is but the old story of the desire to dominate the highways of commerce. As long as sections on great commercial routes remain in the control of single nations, misunderstandings are sure to arise. This is true of the air as well as the sea and the land. At the present time no aviation company would attempt to run a scheduled route above the territory of any state without its previous consent. Due to commercial rivalries, differences in policies, a desire to bargain and other reasons, this assent is not always forthcoming. In the following chapter an account of some of the present conflicts will be discussed. Suffice it here to say that the problem of aerial privileges engages the attention of diplomacy in nearly every capital of the world.

Aircraft as a War Weapon

The third phase of international control concerns the use of aircraft as a weapon of war. In this field the two serious

problems are the competition between the military states to outclass their rivals in air armaments, and the rules of warfare which attempt to limit the use of aircraft in time of war and to bring the most deadly of weapons within the pale of civilization. In 1929, Lord Thomson, Secretary of State for Air in the British cabinet, speaking before the Authors' Club, stated that the gravest problem confronting his ministry was the expansion of the air forces of foreign lands.[1] And he added that unless a stop were called, competition in naval vessels and land armaments would be insignificant compared to that in aviation. This competition, he held, was not merely limited to military aircraft; it had extended to vast governmental subsidies paid to air-line companies, aircraft manufacturers and every phase of the industry.

There are, at present, no international agreements regarding the limitation of aircraft such as the treaty of 1922 limiting battleships and aircraft carriers. The Committee on Aviation at the Washington conference, after studying the question of restricting the number of dirigibles and airplanes, reported unanimously against limitation as being detrimental to aeronautical development, and the conference confined itself to the creation of a commission of jurists to meet at The Hague and propose an international code to govern the use of aircraft in wartime. The question was also discussed at the London naval conference of 1930, but without resulting in any limitation.

The Preparatory Commission for the Disarmament Conference of the League of Nations has taken up the problem of restricting the construction of aircraft. It is enough to indicate, while we are looking at the problem of international control in its broader aspects, that the same perplexing questions that divide France and Great Britain in regard to the measurement of land armaments impede agreement upon limitation of aircraft. In particular, there is the question of

[1] Jane's *All the World's Aircraft, 1929* (London, 1930), p. v.

reserves. What shall be the relation of the reserve forces (trained officers and men not in active service) to the actual forces under arms? No formula has been found to resolve this question. There is also the awkward query as to the relation between civil aviation and military aviation, which likewise awaits solution.

The second general problem concerns the attempt to secure an international code of law regulating aerial warfare. Unhappily, in the early development of flying, the possibilities of aircraft as instruments of warfare vividly appealed to the human mind and spurred on the ardent search for the secret of wings. When the Great War began, jurists had not succeeded in persuading governments to adopt any extensive and clear-cut rules governing the use of aircraft in warfare. Conventional law was pitifully inadequate. The war, which witnessed prodigious development in the mechanics of flying, also witnessed deplorable violations of the few existing rules of aerial war law. But such violations were actually encouraged by the vagueness of the rules.

In 1923, the Commission of Jurists appointed to meet at The Hague in pursuance of the resolution of the Washington conference drew up a project of a code for the regulation of aerial war.[1] This code, if universally adopted, will undoubtedly aid in the attempt to regulate war, though not all international thinkers are agreed that war can be properly regulated by a nicely adjusted code of legal rules. One school holds that governments should endeavor by means of legal codes to ameliorate the sufferings of war and to govern the conduct of hostilities by a logical and definite system of rules. An opposing school asserts that the only way to circumvent war is by making it still more horrible, by striking down all so-called legal restrictions and allowing combatants to win in the quickest possible way—by poison gas, by disease germs that will kill off a whole nation or by unlimited raids of air-

[1] See Appendix VI.

craft.[1] In other words, this theory concludes that war should be made so destructive that a nation will not dare to appeal to force of arms unless it possesses such superior armaments that its enemies will surrender without a struggle. In late years, others have held that while codes of war have little efficacy, the machinery of international statecraft and the psychology of nations can be so developed that the status of war will become more and more rare and codes of war will become unnecessary.

In closing our general survey of the problem of aerial regulation we should take note of the fact that in one very real sense flying has an international character. It is the most rapid form of transportation; in most countries only a few hours' flight will carry the voyager out of one national territory into another and possibly into several. This idea is unconsciously shown in the maps frequently published by aviation companies in which air routes are drawn from city to city omitting all indication of national boundary lines. Indeed, it is not rare to find commercial aviation maps that omit even the sea barriers; London and Paris, for instance, being connected by a straight line with no indication of the English Channel.

All this tends to render aviation susceptible to interstate regulation, to hurry along the unification of conflicting national laws and to iron out diplomatic controversies due to international competition.

[1] For a statement of this theory, compare W. Lee Lewis, "Is Prohibition of Gas Warfare Feasible?" in *Atlantic Monthly*, June 1922, p. 834-840.

II. THE AIR SYSTEMS OF THE WORLD

WHILE aviation presents many international aspects the industry is organized to-day on a national basis. It is true that there exists an International Air Traffic Association—a loose federation of European air companies to promote cooperation in transportation services—and there are international regulatory organs maintained by groups of Governments such as the International Commission for Air Navigation located at Paris. But aviation, as an industry, like shipping, railways and telegraphs, finds its roots in national enterprise.

The National Aviation Systems

Nearly every country has an aviation system. Some of the air routes lie wholly within the national borders; but others reach out in various directions and enter the great network of international traffic. The following table gives a comparative view of the most important systems now in operation:

Commercial Aviation in 1928[1]

Country	*Miles of lines*	*Miles flown*	*Passengers carried*	*Mail in lbs.*	*Freight in lbs.*
Austria		351,825	5,477		214,145
Belgium	3,646	402,236	9,854	6,978	299,444
France	14,801	4,560,627	19,698	286,847	2,544,117
Germany	7,275	6,832,230	113,615	760,302	4,671,972
Great Britain	8,231	1,033,260	36,769	299,200	1,621,400
Italy	4,827	810,515	8,936	6,853	378,978
Japan	535	248,779			
Netherlands	4,445	1,013,330	17,007	76,696	1,495,142
Russia	11,971	1,492,456	8,966		503,054
Spain		322,285	4,784	4,613	69,441
Sweden	711	947,241	55,728	85,518	614,767
United States	36,321	10,673,450	49,713	4,163,173	1,848,156

[1] This table is limited to scheduled flying on regular air routes. It is compiled from Jane's *All the World's Aircraft, 1929, passim; Annuaire de l'Aéronautique, 1929*, ch. v, p. 31-35; *Deutsche Luftverkehrsstatistik, 1928*, p. 19-23; International Air Traffic Association, *Information Bulletin* (The Hague, 1929), No. 12, p. 21-54; British Air Ministry, *Report on the Progress of Civil Aviation, 1928* (London, 1929), p. 39; United States Department of Commerce, *Annual Report of the Director of Aeronautics, 1929*, p. 25; C. I. N. A., *Bulletin de Renseignements*, 1929, *passim*.

In all countries having a complete aeronautic system the industry is almost uniformly divided into the manufacturers of aircraft and the air traffic companies that operate the air routes above mentioned. The manufacture of aircraft of all types in 1928 was as follows: in the United States, 4,346; France, 1,440; Italy, 475; Germany, 352; Great Britain, 204; and Switzerland, 25.[1] A considerable export trade has grown up not only between the manufacturing and nonmanufacturing countries but also between the manufacturing countries themselves.

Civil and Military Aviation

In almost all of these national systems there is a close connection between military and civil aviation. For instance, in Great Britain, France and Italy, both military and commercial aviation are under the regulation of the same ministry—the Air Ministry. In these countries, commercial aviation is looked upon as one of the sources of national defense and is vigorously promoted with this end in view. The connection is so close that frequently aviation companies operate machines loaned them from the military forces while they recruit most of their pilots from the army. This is particularly the case with the Italian companies—the Transadriatica, the Navigazione Aerea and the Aero Espresso.

In Germany, Austria and the United States, the situation is somewhat different. Under the peace treaties, Germany and Austria are forbidden to possess military aircraft. In the United States, the air commerce act of 1926 placed the promotion and regulation of commercial aviation under the Department of Commerce, leaving military aviation in the hands of War and Navy Departments. Nevertheless, even in the United States, the fact that the military departments are the largest customers of the aircraft manufacturers tends to influence the industry.

[1] The figure for Great Britain includes only commercial airplanes. Compare U. S. Department of Commerce, *Annual Report of the Director of Aeronautics, 1929*, p. 62, 64-65.

It is generally believed that if the support given to the aeronautic industry by the purchases of military departments were withdrawn, the industry would receive a setback, and that the wheels turn in many aviation factories because of the flow of orders for military planes. What this means to the aeronautic industry is partly indicated by a comparison of the number of planes in the military forces and the number employed by the large air-traffic companies on their scheduled routes:

MILITARY VERSUS COMMERCIAL AVIATION IN 1928[1]

Country	*Number of military planes*	*Number of commercial planes used on scheduled routes*
FRANCE	4,730	302
UNITED STATES	1,813	268
ITALY	1,640	28
GREAT BRITAIN	1,292	29
JAPAN	572	42
POLAND	541	6
BELGIUM	360	33
GERMANY	-----	659

Statistics on this subject are difficult to obtain and their value is impaired by the lack of uniformity in the various reports on equipment. But it is probably safe to say that military fleets far surpass in size the aircraft employed by the large traffic companies.

GOVERNMENTAL SUBVENTIONS FOR AVIATION

In Europe, commercial aviation is directly subsidized. Subventions are granted to manufacturers of aircraft, to aero clubs and to air-line companies. The most common form of subsidy is a mileage or kilometric subvention as in

[1] The military information in this table is partly taken from the Statement of the Air League of the British Empire published in the London *Times*, January 20, 1930, p. 14. The commercial information is partly compiled from International Air Traffic Association, *Information Bulletin* (The Hague, 1929), No. 12, p. 16-57; Jane's *All the World's Aircraft, 1929, passim*, and U. S. Department of Commerce, *Annual Report of the Director of Aeronautics*, 1929, p. 58.

France and Germany, whereby a certain payment is made by the government for every mile or kilometer flown by the subsidized company over a scheduled route. Under this system, parliaments appropriate each year a maximum sum for such payments while the governments make contracts with aviation companies for the payment of the subsidy according to mileage. In Germany, these contracts are for one year; in Great Britain for ten years; and in France, in several cases, for ten years.

Subventions of the character just described establish a more or less intimate relationship between commercial aviation and the government and tend to bring a large political influence into the industry. They play an important rôle in the present international competition for air supremacy. This competition, at the present time, involves all of the imperial systems of air lines, particularly the French, British, German, American, Italian and Dutch. Each of these ventures is viewed not only as a salutary extension of commercial activity but also as a strategic undertaking of great military value.

The French Network of Air-lines

In many respects the French system shows closest affiliation between government and commerce. France emerged from the Great War with an exalted idea of the necessity for security. Every resource of the nation must be mobilized for defense against a possible renewed conflict with Germany. In the war, no weapon had undergone a more profound development than the airplane, no weapon gave more promise of still greater development as an instrument of offense and defense. As a result, the attitude of the Government toward civil aviation was destined to be political rather than commercial. Subventions were voted to the newly formed aviation companies in the first postwar session of parliament. Commercial aviation was regarded chiefly as a reserve for the army, generous subsidies being granted particularly for

machines adaptable to military conversion. Consequently, French companies maintained fleets larger than their air routes required while their airplanes were less comfortable for the traveler than the German machines.

Beginning with the comprehensive policy mapped out in 1919, the French aim has been to connect Paris with the capitals of its European allies, to connect France with its colonies, and finally to develop routes particularly adaptable to French exploitation. In 1928, aviation was placed in the hands of a separate Air Ministry, and under its direction the French system is resolved into three great networks, including: (1) continental Europe, (2) the Orient, and (3) Africa and South America.

The continental network connects France with most of the capitals and great seaports of western Europe, extending as far north as London, Amsterdam, Copenhagen and Malmoe, and as far east as Warsaw and Bagdad. The oriental service runs from Marseille to Syria and ends at Bagdad; eventually it will be continued eastward to Indo-China, where a mail service already exists between Saigon and Hanoi. The Paris-Constantinople line will be extended to Aleppo and Beirut.

The African and South American system connects France with almost every French possession in Africa, including the celebrated trans-Saharan line; while the South American branch extends from Paris to Dakar on the coast of west Africa, and thence by fast boat to Natal in Brazil. In South America, the French have developed lines along the east coast to Buenos Aires, westward to Santiago de Chile, and northward from Buenos Aires to Asunción, and southward to Comodoro Rivadavia. Extensions of this system are under way, first along the west coast from Santiago to Callão, and second along the east coast from Natal to Barranquilla and to the islands of Martinique and Guadeloupe.

The growth of the ambitious network of France is shown by the following table:

GROWTH OF FRENCH COMMERCIAL AVIATION [1]

Year	*Kilometers of routes*	*Kilometers of flight*	*Passengers*	*Freight in Kg.*	*Mail in Kg.*
1920	5,605	853,959	1,379	48,100	3,295
1921	6,492	2,353,455	9,427	166,490	9,481
1922	10,012	2,798,366	6,799	388,509	40,367
1923	8,333	3,387,195	7,822	704,253	73,573
1924	8,542	2,647,826	10,758	674,559	110,176
1925	10,860	4,712,888	14,985	641,196	198,609
1926	12,153	5,220,585	13,634	767,681	154,258
1927	18,226	6,028,727	15,857	746,452	125,289
1928	23,741	7,297,004	19,698	1,156,417	130,385

On the map of the world, the French aerial system makes a most imposing impression. The actual traffic on these lines, however, is surpassed on the German, British and American lines. A comparison of the five great systems shows Germany far in the lead as to the number of passengers and freight carried; while the United States takes the lead in the number of miles of routes, miles flown and mail carried.

France occupies a unique geographical position in aviation. It holds a strategic position on two great routes of commerce. German air-lines cross French territory on the way to South America, and British lines on the way to the Orient. The ambitious system mapped out by the air ministry has for its object the realization of what is called the "geographical destiny of France", namely, an outstanding position in aerial navigation. In the words of Emmanuel Chaumié, director of commercial aviation in the air ministry: "It is necessary that France become conscious of the rôle it plays. . . . The three great networks constituted by Monsieur Laurent-Eynac will permit our country to realize the destiny that geography opens to it. France is thus prepared to take a preponderant place in the empire of the air." In the words of Laurent-Eynac, the present air minister:[2]

[1] *Annuaire de l'Aéronautique*, 1929, Ch. V, p. 31-35.

[2] The quotations are taken from two statements by Messrs. Laurent-Eynac and Chaumié in *L'Europe Nouvelle*, February 8, 1930, p. 228, 230.

With its Atlantic and Mediterranean coast, its possessions in Africa, Asia Minor and the Far East, France must hold its own on the great aerial courses of the world. If the exploitation of these international routes should result in international pooling of interests, it is necessary for us to be prepared. In international bargaining, nations never exchange projects or ambitions. They trade only positions actually held; they deal only with realities.

Thus it appears that the present far-flung air-lines of France are maintained not only for the immediate prestige and defense of France as a colonial power but also as a bid for predominance in any future international amalgamation of air traffic.

These ambitions are costly. In the past few years, France has greatly increased the subventions paid to air-traffic companies.

AIR TRAFFIC SUBSIDIES VOTED BY THE FRENCH PARLIAMENT

Year	*In francs*	*Year*	*In francs*
1919	1,545,000	1925	51,340,000
1920	6,207,000	1926	60,250,000
1921	25,180,000	1927	78,650,000
1922	34,908,000	1928	115,000,000
1923	36,067,000	1929	172,000,000
1924	41,100,000	1930	196,000,000

The budget of 1930 contained a vote of 196,000,000 francs to subsidize commercial air-lines.[1] The actual amounts of the subsidies paid out of this fund to the five French air-lines are not available to the public, but they are probably not much below the figures demanded by the air minister in his project of a budget for 1930, and indicated in the following table:[2]

[1] *Journal Officiel, Lois et Dècrets*, April 17, 1930, p. 4253.

[2] *Budget Général de l'Exercise 1930: Air*, ch. xli, p. 173. The air minister asked for a vote of 210,150,000 francs for the year 1930.

Subventions to Air-Lines in the French Budget of 1930

	French francs
1. *Connections with Morocco, East Africa and South America.*	
Toulouse-Casablanca	14,450,000
Marseille-Perpignon	2,100,000
Bordeaux-Toulouse	250,000
Casablanca-Dakar	6,300,000
Saint Louis-Buenos Aires	38,000,000
Buenos Aires-Santiago de Chile	4,000,000
	65,000,000
2. *Connections with Algeria and Tunis.*	
Paris-Marseille	5,000,000
Marseille-Tunis-Bône	21,200,000
Marseille-Algiers	15,000,000
	41,200,000
3. *Connections with Syria and Greece.*	
Marseille-Athens-Syria	18,000,000
4. *Connections with Eastern Europe and Syria via Eastern Europe.*	
Paris-Constantinople-Warsaw	32,000,000
Constantinople-Aleppo-Bagdad	2,000,000
	34,150,000
5. *Connections with England.*	
Paris-London	11,800,000
6. *Connections with Northern Europe and Germany.*	
Paris-Amsterdam-Malmoe	7,400,000
Paris-Berlin	7,000,000
	14,400,000
7. *Connections with Spain.*	
Paris-Madrid	3,500,000
8. *Connections with Indo-China.*	
Rangoon-Vinh	5,000,000
9. *Connections with the Congo.*	
Paris-Oran-Colomb-Bechar-Elizabethville	16,000,000

It should also be noted that the item of 100,000,000 francs in the budget for "researches, studies and experiments, and construction of prototypes" together with another item for 3,587,000 francs, serves also in part as a subsidy to the manufacture of aircraft.

The close alliance between the Government and the air companies operates in two directions. On the one side, the minister of air is a representative of the aeronautic industry. It is commonly said that the industry through its influence in the Chamber of Deputies practically dictates the appointment of the minister; that four cabinets have come into office since the Air Ministry was established in 1928, but Laurent-Eynac, by the grace of the aeronautic interests, has sat in every one. On the other hand, the minister of air has taken a prominent part in shaping the destinies of aeronautic companies to the needs of France as well as to the interest of the large banks that loan money to the companies.

Several policies of the Air Ministry illustrate this reciprocal relationship. The financial interests backing the industry demand that the governmental subsidies to the air companies be in the form of ten-year arrangements rather than annual agreements subject to the caprice of the Chamber of Deputies. Such contracts have been awarded to the Air Union and the Aéropostale, and Laurent-Eynac is urging forward the same grant to all the other companies. In the second place, the financial interests backing the industry demand, and governmental regulation likewise requires, a concentration of manufacturers and air-lines into a few large groups.[1] Already one great controlling company, the Société Générale Aéronautique, has paved the way for a centralization of manufacturing concerns, while, the air-lines have been combined into three—namely, the amalgamation of C. I. D. N. A. (the common designation for the Compagnie Internationale de Navigation Aérienne) and the Farman lines op-

[1] Compare *Rapport fait au nom de la Commission des Finances chargée d'examiner le projet de loi portant fixation du Budget Général de l'exercice 1929: Air*, p. 17-19; *Ibid.*, 1930, p. 21-23.

erating on the continent and in Asia Minor, the Air Union connecting France with the Orient, and the Aéropostale and its subsidiaries connecting France with Spain, Africa and South America.

In the third place, the air ministry is promoting a decentralization of factory locations. In terms of national defense, the French air industry has been vulnerable because of the concentration of the aeronautic factories in the vicinity of Paris. If a future enemy should capture Paris, the air fleet of France would be paralyzed. As a military precaution, the minister of air has initiated a movement for scattering the factories more widely over France.

The subvention of aeronautics in France has not been without its critics. Attacks upon the system as a breeder of monopolies have frequently occurred in the Chamber of Deputies, while a prominent aeronautical journal, *Les Ailes,* opposes the system as a menace to the best interests of the industry.[1] General Hirschauer has recently pointed to the fact that there actually exists one private company that receives no subsidy from the state and yet pays dividends.[2]

[1] Compare the debate on the budget of 1930 in the Chamber of Deputies, in particular, the speeches of Jules Moch and Pierre Roux-Freissinuy as reported in the *Journal Officiel, Débats Parlementaires,* February 5, 1930, p. 459-472. *Les Ailes,* referred to in the text, is a weekly journal published at 65, Faubourg Poissonnière, Paris. See the trenchant editorials by George Houard in the issues of March 21, 1929, p. 1-2; March 13, 1930, p. 1-2.

In justification of the French subsidized air-lines to-day it should be said that the industry is far different than in 1920 when C. Grey Grey penned the following indictment: "The French Government affords a subsidy based on a regular sum per kilometer flown. Consequently it pays in France to buy an obsolete war-aeroplane for a few thousand francs, register it as a civil aviation machine, and run it as frequently as the weather permits between one point and another as a so-called air-line. Thus, in its generosity, the French Government has actually done harm instead of good in that the tax-payer's money is wasted in the form of a subsidy which is spent in consuming petrol and wearing out a useful aero engine, and in occupying the time of a pilot who might be doing useful work of some other kind, while at the same time, none of the subsidy is spent, as was originally intended, in improving the design and construction of commercial planes." (Jane's *All the World's Aircraft,* 1920, p. 136a.)

[2] Senat, *Rapport au nom de la Commission des Finances, chargée d'examiner le projet de loi, adopté par la Chambre des Députés, portant fixation du Budget Général de l'exercice 1930, Ministère de l'Air,* p. 90-91.

The British System of Imperial Communications

The British interest in air systems is based upon several considerations, two of which claim particular attention. In the first place, Great Britain, as the greatest sea power, nucleus of a far-flung empire, is deeply concerned in the speediest means of communication with its overseas possessions. In the second place, the invention of aircraft has brought a new menace to the British Isles the inhabitants of which have hitherto been free from the soul-withering fear of foreign invasion. For the first time since the Spanish Armada, the shores of England are now vulnerable to attack from continental Europe.

In the days immediately following the Great War, the British found airplanes of great use in military campaigns in remote regions like Mesopotamia and Afghanistan. There was every incentive to develop better fighting machines for the Royal Air Force and to promote commercial aviation as a means of imperial communication. Nevertheless, no governmental subsidies were granted to the two English companies which in 1919 established the first transport services to the continent. These companies competed with two French companies for the traffic between Paris and London. The French concerns enjoyed generous subsidies from their Government and, after reducing traffic rates, drove the British companies out of the field. British officialdom was finally alarmed. In 1921, a temporary scheme was adopted subsidizing two British companies.[1] In 1924, under governmental guidance, four British air companies were merged into the present monopoly known as the Imperial Airways Ltd., with a subsidy of £137,000 per annum. At the same time was begun the practice of granting a subsidy of £2,000 for two years to air clubs. Thus was initiated the British system of subvention.

[1] Compare British Parliamentary Papers, Air Ministry, *Agreements with the Handley Page Transport, Limited, and S. Instone & Co., Limited, for the Operation of the London-Paris Aeroplane Service, March-October 1921* (Cmd. 1521 of 1921). See also the statement by Lord Gorell in the House of Lords, October 27, 1921.

In 1926, Sir Samuel Hoare, the then secretary of state for air, laid before the Imperial Conference a comprehensive scheme of imperial communications, and asked the Dominions and India to cooperate in the venture.[1] As a beginning, the Imperial Airways was given a special subsidy of £95,000 per annum for five years to open the Egypt-India Service. In the following year the service was partially opened via Athens-Alexandria-Gaza-Bagdad-Basra. Due to objections on the part of the Persian Government, the line was not extended to Karachi until the year 1929.[2] Finally, in 1930, the trans-Indian service was extended from Karachi to Delhi and Calcutta, with a projected line to Rangoon.[3] In the meanwhile, Pierre van Ryneveld and Alan Cobham had shown the possibility of trans-African aviation, with the result that in 1929, aided by a subsidy of £60,000, the Imperial Airways began a partial service from Egypt to South Africa, thus adding another chapter to the Cape-to-Cairo dream of Cecil Rhodes.

The British system, at the present time, consists of four routes to European capitals and two great colonial routes across Asia and Africa. While the British air-lines seem inferior to the French in respect to size, British experts hold that they are on a sounder basis. The total subsidies of Imperial Airways amount to only £345,000,—the governmental policy appears to be one of conservative advancement, —and the air traffic exceeds the French.

The German Air System

The treaty of Versailles imposed heavy restrictions on German aviation which we shall describe in another place,

[1] Air Ministry, *Approach towards a System of Imperial Air Communications* (London, 1926). See also the conclusions in Imperial Conference, 1926, Summary of Proceedings, p. 40, and Appendices, p. 192 and 218 (Parliamentary Papers, Cmd. 2768 and 2769).

[2] Referring to the arrangement with the Shah's Government permitting the Imperial Airways to fly over Persia only once a fortnight, C. Grey Grey wrote in picturesque language: "Of course in the good old days of Palmerston or even Disraeli we should never have had this trouble with Persia. We should merely have landed a company of troops on whatever aerodrome we wished to use, and should have defied the whole Persian army to put them off." (*The Aeroplane*, May 7, 1930, p. 324).

[3] Air Ministry, *Report on the Progress of Civil Aviation, 1927* (London, 1928), p. 4; London *Times*, March 19, 1930, p. 8.

while original Art. 5 of the air navigation convention of 1919 deliberately sought to bar German aircraft from flight over the territory of other states. In particular, we should note that the prohibition upon military planes has deprived the German industry of a home market and an indirect subsidy which every other large state has lavishly afforded its industry.[1] Nevertheless, German aviation has forged ahead with rapid strides. Beginning with sharp competition between small concerns, the German experience followed that of other European countries where the government by its subsidy policy deliberately promoted semi-monopoly. In 1926, under the guidance of the Reich ministry of communication, the two largest competitors, the Deutscher Aero Lloyd and the firm Junkers combined to form the Deutsche Luft Hansa. This corporation was subsidized by the Reich, the states and various German cities to the amount of about 19,000,000 gold marks a year.[2] A network of lines connecting the principal capitals of Europe was established, and plans were projected for lines both to the Far East and to South America through an understanding with Spain that would develop Seville as the great air center of western Europe. In 1928, the section of this project known as the Berlin-Marseille-Barcelona-Madrid line was inaugurated, the Barcelona-Madrid portion being operated by a Spanish company.

State monopolies are not popular in postwar Germany, and at the same time the short-route aviation lines have bitterly complained of the advantages of the Luft Hansa. As a consequence, in March, 1929, when pressure was exerted to effect economies in the budget of 1929-30 under the forthcoming Young Plan, the German Reichstag cut aviation

[1] "C.G.G." (C. Grey Grey, the sagacious British critic of aeronautics) thinks that the treaty prohibitions on Germany are a blessing in disguise. Commenting on the great progress in the German aeronautic industry he says: "Germany has the great advantage, when concentrating on capturing the world's civil aviation that, thanks to the Versailles treaty and the French, she has no air force to maintain. Consequently, the money which would otherwise have to be used for her air force can be spent in subsidizing air lines and the manufacture of commercial aircraft." *The Aeroplane* (a weekly periodical published at 173, Piccadilly Circus, London), Oct. 28, 1925, p. 496.

[2] International Air Traffic Association, *Information Bulletin*, No. 12 (The Hague, 1929), p. 19.

subsidies by one-half.[1] The Luft Hansa was compelled to discharge a third of its personnel and to abandon a number of its routes. Several of the international lines were taken over by French and Belgian companies, and most of the short routes by its German competitor, the Nordbayerische Verkehrsflug. This curtailment caused so much distress not only to the subsidized air-line but also to the manufacturing industry that the Reichstag was compelled in November to vote several supplements to the budget for their relief.[2]

There is considerable difference of opinion in Germany as to whether the aeronautical industry would be more effectively promoted by being compelled to stand on its own feet or whether the system of subsidies should be revived, and there is difference of opinion as to what is to be gained by maintaining a world-wide system of air-lines.[3] Germany lost all of its overseas possessions in the Great War, and, although a clever Stresemannian policy as a Member of the League of Nations may succeed in winning back the administration of a mandate or two in Africa and the Pacific, it is contended that Germany has little to gain by building up a network of air-lines. As commerce advances, the empires of the future may not be dependent on colonies, but rather on transportation systems. On the seas, the North German Lloyd and the Hamburg Line, with such magnificent ships as the *Bremen* and the *Europa,* are making rapid progress toward recapturing Germany's share of the sea-carrying trade which was lost in the Great War. In the air, its passenger, mail and freight

[1] *Reichsgesetzblatt,* Pt. ii, June 30, 1929, p. 443, 454, 461, 462.

[2] The budget demanded by the Reichsverkehrsministerium for civil aviation in 1930 was 44,423,500 gold marks as compared with the total appropriation of 47,884,500 marks in 1929. See *Einzelplan, Haushalt des Reichsverkehrsministeriums für das Rechnungsjahr 1930* (Berlin, 1930), p. 108-118, 138-140. The greater part of the budget was assigned to subsidies to the Deutsche Luft Hansa and the manufacturers. In 1929, the sum of 2,500,000 marks was contributed to the maintenance of the airship *Graf Zeppelin;* in 1930 the ministry demanded 3,150,000 marks.

[3] Compare articles by Wolf von Dewall and Dr. Josef Sablatnig in the *Frankfurter Zeitung,* April 18, p. 1, and the *Berliner Tageblatt,* April 13, 1929, and an article by Dr. Carl Hann Pollog on "German Commercial Aviation in 1929" in the *Aero Digest,* January, 1930, p. 59, 98. Also see speeches in the Reichstag in *Die Stenographischen Berichte des Reichstags,* March 26, 1930, p. 4659-4662; June 14, 1929, p. 2431-2482.

services surpass all other European systems. The world-girdling flight of Dr. Hugo Eckener with the *Graf Zeppelin* in 21 days and seven hours adds to the prestige of the German nation, while the establishment of a new international dirigible air-line across the Atlantic is promised in 1933.[1]

In all events, Germany appears to be one of the most outstanding factors in international flying. Barred by the victors of the Great War from immediate membership in the International Commission for Air Navigation—the first international organization for regulating the air—Germany has shown no haste to join the commission. At the same time the early attempt to bar German flights over the territory of the other states promptly proved to be infeasible. The Germans have become the most air-minded people in Europe They have become more accustomed to traveling by air than have Frenchmen and British; in this connection it should be remembered that 75 per cent of the passengers on the French line between Paris and London are Americans. In 1927 and 1928, German airplanes flew more miles and carried more passengers than all the French, British and Italian lines combined. It was this showing by the German industry that was largely responsible for the huge increases in subsidies which the French Government granted the French air industry in 1928.

The Italian Program

Under the vigorous ægis of Mussolini, aviation in Italy has assumed great ambitions. Before Fascism came into power, Italian military flying was carried on largely with machines received as reparation from Austria and Germany or with obsolete airplanes remaining from the war. Within four years after the march on Rome in 1922, the Fascist dictator succeeded in developing a military air force that is considered superior to the British. A separate air ministry was created in 1925, and the air budget has increased from 399,000,000

[1] Compare the statement issued by Dr. Eckener in London on April 24, 1930. (London *Times*, April 25, 1930, p. 9.)

lire in 1924 to 800,000,000, or over $30,000,000, in the budget of 1930.[1] At the same time a commercial air network is being developed to link Italy with the capitals of western Europe, with the colony of Tripoli and with Asia Minor where Italy has no colony but possesses mining concessions. In 1928, air treaties were negotiated with Spain, Austria, Germany and Greece, and air-lines were opened into the territory of these states; while in 1930 an air agreement was reached with France. The six Italian air-line companies are heavily subsidized to the amount of nearly three million dollars a year; they enjoy ten-year contracts, and are completely under the patronage of the Fascist Government.[2]

The diplomatic complications that result from the governmental tutelage in Italy are illustrated by the recent Italian quarrel with the British Imperial Airways which culminated in the exclusion of British commercial lines from Italy.[3] Commercial aviation in Italy is still largely a camouflage for military aspirations. Although the Italian system spreads ambitiously over the map of Europe its traffic is but one-thirteenth the size of the German, one-tenth the size of the American, and one-sixth of the British.

Other European Systems

Ambitious air projects are not limited to the great states. The Netherlands, a small state of 7,000,000 people who govern a colonial possession of 48,000,000, not only supports a large continental company, but in 1929 inaugurated a service from Amsterdam to Batavia and the Dutch East Indies. The K. L. M. (Koninklyke Luchtvaart Maatschappij voor Nederland en Kolonien) has received until recently one of the smallest governmental subventions in Europe, yet it has maintained a service comparable to those of the great states. In

[1] For the Italian budget of 1930 submitted by General Balbo, see *Atti Parlamentari, Sessione 1929-30, Camera dei Deputati, No. 445, Stato di Previsione della Spesa del Ministero dell'Aeronautica, 1 luglio 1930 al 30 guigno 1931, p. 6.*

[2] For a map and statistics regarding the Italian lines see *Ministerio dell' Aeronautica, Statistica delle Linee Civili Italiane, 1929* (Rome, 1930).

[3] See further, p. 32.

1929, its airplanes flew 1,087,450 miles and carried 17,165 passengers. Its subsidy has amounted to less than $125,000 per annum. With the inauguration of the colonial service, a subsidy of over a million dollars was granted.

Austria, Belgium, Czechoslovakia, Sweden, Switzerland, Yugoslavia, Denmark and Hungary also support air companies, all of which receive cash subsidies from the Governments.[1]

Russia is one of the most promising fields of aeronautical enterprise. The great distances within the Soviet borders invite the development of a rapid method of transportation. Considerable progress has already been made. With German cooperation, Russia is now linked up with western Europe and under Soviet direction a large interior air network is being evolved. The German-Russian company, the Deruluft, operates a line from Moscow to Berlin, with a branch line from Riga to Reval and Leningrad. It is subsidized by the German Government and receives special favors from the Soviet Government. A purely Russian concern, the Dobroliot, carries on a domestic service of over 3,000 miles. The great economic project known as the Five-Year Plan, adopted by the All-Russian Congress in 1929, provides for an air system of 26,500 miles to be completed by the year 1933, including the completion of the line from Moscow to Vladivostok, Peiping and Tokyo, a line from Moscow to Tashkent and Kabul, and services from Archangel to the lumber and fur centers on the White Sea.[2]

Spain has made an ambitious bid for air control, particularly in the western hemisphere by means of the Ibero-American convention of October 30, 1926, which aims at joining the Latin American countries with Spain into a combination of states supporting an international commission

[1] International Air Traffic Association, *Information Bulletin* (The Hague, 1929), No. 12, p. 38, 44, 45, 55, 57; British Air Ministry, *Report on the Progress of Civil Aviation*, 1928, p. 57-71.

[2] *Piatiletnii Plan Sotsialistscheskovo Stroitel'stva*, (Five-Year Plan of Socialist Reconstruction) (Moscow, 1929), I, p. 92-95. Compare article by V. Zarzar on "Soviet Civil Aviation and its Prospects" in *Planovoe Khoziaistvo*, August, 1928, p. 240-258; also articles in *Izvestia*, October 3 and 5, 1929, p. 1.

similar to the I. C. A. N.[1] dominated by France, Great Britain and Italy. Only four states, however, have thus far ratified this convention, while the Pan American convention of 1928 may result in introducing a rival system in the same field.

Nevertheless, with the collaboration of German enterprises, realities in Spain are beginning to appear. In 1928, the Department of Civil Aviation and Air Transport was organized under the Supreme Council for Aeronautics. In the same year the Madrid-Berlin service was inaugurated; while projects were elaborated to connect Seville with South America. Two Spanish air-lines are subsidized as high as 3,000,000 pesetas a year. A new company, the Sociedad Colon Transaerea Española, which has reached an agreement with Argentina for the carriage of mails over the proposed route from Seville to Buenos Aires, is also subsidized by the Spanish Government. With German support and Latin American good will, the prospects of Iberian aviation are viewed as excellent.

Aviation in the United States

In sheer bulk, the American aviation system surpasses all other air networks, but it does not entail a corresponding international significance because of the fact that 90 per cent of the flying is wholly within the borders of the United States. There are 24,366 miles of domestic airways with a schedule of 79,586 miles of daily flying. The foreign service, partly within and partly without American jurisdiction, amounts to 11,599 miles of air routes with 8,400 miles of daily flying.[2]

American companies operate several lines into Canada, two lines through Mexico, one to Cuba, and one to Nassau. At the present time, interest is particularly centered in the lines to South America. One of these lines, operated by the Pan American Airways, extends from Miami through Central

[1] The initials of the International Commission for Air Navigation; also known as the C. I. N. A., from the initials of the French name, Commission Internationale de Navigation Aérienne.

[2] U. S. Department of Commerce, *Air Commerce Bulletin*, December 16, 1929, p. 68.

America to the Canal Zone, and thence down the west coast of South America to Santiago de Chile, and across the Andes to Buenos Aires. Another line of the same company runs from Miami by way of Cuba, the island of San Domingo to Trinidad, and along the South American coast to Paramaribo. A new line, the New York, Rio & Buenos Aires (Nyrba), extends through the West Indies to South America, as far south as Buenos Aires.

None of the American lines receive out-and-out subsidies from the Government and frequently the American system is cited as an example of aerial development without the aid of subventions. The tribute, however, is not entirely deserved. Indirect subsidies are paid in the form of contracts for carrying the mails which are placed at higher rates than the revenue recovered by the Government from the public through surcharges in the form of special air-mail stamps. The amount involved in these contracts far surpasses any subventional payments in European countries save those of France. In the year 1929, air-mail contracts reached $11,169,015.[1]

Down to the present day the United States has stood somewhat aloof from European and Asiatic aviation. It did not ratify the international air navigation convention of 1919, and it did not participate in the Ibero-American Congress. On the other hand, in counter-balance to European cooperation, it played a leading rôle in the conference of Habana in 1928 which drafted the Pan American air convention establishing a code for the regulation of international flying in the western hemisphere. The American position, however, is somewhat vague, for after a lapse of two and a half years the Senate has still failed to ratify the Pan American convention.

[1] Compare *Annual Report of the Postmaster-General, 1929*, p. 126. It should be pointed out that Nyrba, unlike the Pan American Airways, at present has no mail contract with the United States Government. It has contracts with the South American countries.

Unmitigated Competition in Commercial Aviation

Commercial competition offers many advantages. Even international rivalries are not devoid of good. But commercial competition combined with military expansion is one of the dangers to international peace. This is the menace of the present subsidized aviation systems which blend commercial and military aviation into one service and promote both branches on the ground of self-defense. Almost invariably air ministries when demanding parliamentary appropriations for commercial aviation stress the argument of national defense.[1]

Under such a system it is to be expected that Governments will use their jurisdiction over the air to aggrandize their national lines at the expense of foreign competitors. An illustration in point is the exclusion of the British Imperial Airways from Italy late in the year 1929. Previously, the Indian mail service of the British Empire had been conducted through Switzerland, and by agreement with Italy, over Italian territory on its way to Athens and Alexandria, with stops at Geneva, Rome and Naples. In 1929, the Imperial Airways attempted to renew the contract. But negotiations were suddenly broken off, and the British were compelled to change the Indian air mail to a new route across Europe and the Mediterranean, following Croydon-Cologne-Nuremberg-Vienna-Budapest-Belgrade-Uskub-Salonika-Athens-Crete-Alexandria.

A semi-official explanation by the Fascist ministry of its refusal to negotiate with the English company attempted to blame the "Socialist Government" of Ramsay MacDonald.[2] It appears, however, that the conditions which Italy tried to

[1] For instance, compare the recent budget speeches of Lord Thomson and Frederick Montague in Great Britain, Laurent-Eynac in France, and General Italo Balbo in Italy. British Parliamentary Debates, *House of Commons*, March 18, 1930, cols. 1927-1942; *House of Lords*, April 9, 1930, cols. 48-57; *Journal Officiel, Débats Parlementaires*, December 8, 1928, p. 3410-11; *Atti Parlamentari, Camera dei Deputi, Discussioni*, March 14, 1930, p. 1837-1841; *La Tribuna* (Rome), March 15, 1930 and April 9, 1930, p. 2.

[2] *Giornale d'Italia* (Rome), January 18, 1930, p. 1; *La Tribuna* (Rome) January 18, 1930, p. 1. See also the newspaper controlled by General Balbo, *Corriere Padano* (Ferrara), January 17, 1930, p. 1.

impose for a renewal of the agreement were detrimental to the British Company.[1] For the Imperial Airways was to be compelled to use the same ports as its Italian rival, the Società Anonima Navigazione Aerea. The Italian company was to have the privilege of running a machine between Genoa and Alexandria midway between the dates of each trip of the Imperial Airways. Tabruk in Tripoli was to be a port of call although of no use to the British service. Finally, Italy demanded a pooling of the income from both the mail and passenger services of the two companies along the whole route to India, and the Italian company was to receive one-half the pool. The absurdity of this claim is evidenced by the fact that in the 25 weeks previous to the rupture of negotiations, the Italian company had not carried a single paying passenger.

The episode is one of the extreme cases of the use of territorial jurisdiction to crush foreign competition. The method is perfectly legal, but not conducive to comity of nations. The British misadventure was cited in the French press as an example of the present deplorable lack of international cooperation. At the same time French aviation was not slow to profit. On January 10, 1930, a Franco-Italian accord was signed at Rome whereby the French Air Union Lignes d'Orient which operates the Marseille-Naples-Athens-Castelrosso-Beirut-Bagdad service was to receive Italian air mail destined for points in the East.

Great Britain has also given cause for international grievance. For years, the French have desired to link up their colony of Indo-China with Paris. In August, 1929, a series of conferences between Lord Thomson and M. Laurent-Eynac at London and Paris gave promise of Anglo-French cooperation in the Orient as well as in Africa and South America.[2] In the following January, the French finally realized their hope of a Paris-Saïgon line by the inauguration of a service covering the distance in ten days—an excellent

[1] See a note signed by "C.G.G." (C. Grey Grey) in *The Aeroplane*, January 15, 1930, p. 90.

[2] Compare the London *Times*, August 7, 1929, p. 7; August 9, 1929, p. 11.

achievement when it is recalled that the schedule for mail by steamer is 28 days. The passage over India on the way to Indo-China was carried out for the French by arrangement with the Dutch K.L.M. which possessed authorization to make only twelve flights from Karachi to Bangkok. The permit to make other flights was not obtained, with the result that the French were compelled to discontinue the service in February, 1930. A few months later, the Dutch obtained British permission to resume the service in October.

While political disturbances in India on the eve of the report of the Simon Commission may have been ample justification for the British decision to suspend a foreign air-line over Indian territory, nevertheless, at the time, the affair caused an unfavorable impression throughout the world of aviation.[1]

French practice, like Italian and British, likewise has given rise to considerable complaint, particularly in reference to the attempt of the subsidized Aéropostale to monopolize the European approach to South America. For some time, the German Luft Hansa has projected a line from Berlin to Natal in Brazil by way of Spain and the Azores. But before the Germans could act, the Aéropostale backed by the French Government secured from Portugal the exclusive privilege to make the Azores a station on the route from Europe to South America. This monopolistic contract brought protests not only from Germany but also from the United States as a counter-claim against French opposition to American aeronautic activity in South America.[2]

[1] Referring to the British refusal to permit the Paris-Saïgon line to cross India as well as to the Italian quarrel with the Imperial Airways, Georges Houard said: "This is another result of international discord in a field where an entente of all nations is absolutely necessary. . . . Thus, a break with one country and an accord with another! The case proves more than ever that international understandings ought to govern aerial navigation, that such understandings are even the condition of success. I believe, more than ever, in the interest and future of a line from France to Indo-China, but for a long time to come this dream can be accomplished only by international collaboration. The accords with Holland and Italy are examples of what are necessary for such cooperation. A similar accord with Great Britain is necessary to asssure the realization of the line to Saïgon. We have the means for bargaining, and England knows it." (*Les Ailes*, January 30, 1930, p. 2.)

[2] Compare dispatches in *New York Times*, February 19, 1930, p. 1, and *Berliner Tageblatt*, February 19, 1930, p. 1; May 10, 1930, p. 1.

It appears that there has been considerable jealousy on the part of Portugal because of the plans of the German Luft Hansa to make Seville a great depot on the proposed route to the Americas. In 1929, the Aéropostale and the Société des Moteurs Gnôme (Rhône) secured the incorporation of the S.P.E.L.A., or Sociedade Portuguesa de Estudios e Linhas Aereas, Ltda., or Portuguese Society of Aerial Research and Air-Lines.[1] The company was formed to obtain from the Portuguese Government concessions for air routes which should be exploited by the Aéropostale, and has been the means of winning the monopolistic 15-year contract above mentioned.

Open Door Versus Reciprocity in South America

American exploitation of South American air routes has raised serious commercial problems. International air-lines developed as early as 1921 when the German firm Scadta (German-Colombian Air Transport Company) inaugurated the system which connects the principal cities of Colombia and Ecuador. A second German firm, the Lloyd Aero Boliviano, incorporated under a Bolivian charter and receiving a Bolivian subsidy, operates in Bolivia. A third German concern, the Kondor Syndikat, operates across the Andes to Buenos Aires and along the coast to Rio de Janeiro. There are also the Chilean National Lines and the Peruvian Naval Lines, as well as the Faucett Aviation Company operating in Peru.

The continent is approached from the European side by the French Aéropostale, which in 1928 established a line of flight from Paris to Dakar in Africa, and then by boat to Natal in Brazil. The French line thence continues along the coast to Buenos Aires and further south, with branches to Santiago, to Callao and northward from Natal to Guadeloupe. From the north, the continent is entered by the two

[1] Compare a series of articles by C. G. Grey on "The Importance of Portugal" in *The Aeroplane*, April 9, 16, 23 and 30, 1930, p. 645-650, 685-690, 729-732, 769-772; Jane's *All the World's Aircraft 1929*, p. 682.

American lines of the Pan American Airways which we have already mentioned. Late in the year 1929, a new American company, the Nyrba (New York, Rio & Buenos Aires Line), developed air stations from Tampa, through the West Indies and down the east coast to South America.[1] It required airport facilities on the French islands of Guadeloupe and Martinique as well as along the coast of French Guiana following a line surveyed by Colonel Lindbergh, and application was made to the French Government for access to French territory.

At the time, Paris and Washington were in the midst of a controversy over customs tariffs. But even more compelling was the fact that the American company in South America would compete with the French subsidized monopoly. Accordingly, the French forbade the Nyrba to fly over the narrow strip of French possessions or to land unless it agreed to carry mail for its rival—the Aéropostale—and unless it gave the French company access to all its airports and hangars along the entire coast from Natal to Cayenne. In other words, the French monopoly which expected to extend a branch from Natal to Cayenne demanded that the American company defray the entire cost of airports along the Brazilian coast for the use of both companies. The American Department of State protested against these terms, and in the meantime, the new line was compelled to take a more difficult route by way of San Lucia. In April, 1930, however, the American company accepted the French terms and its flight across French territory was permitted.

The national friction engendered by the competition just described is illustrated by a statement appearing in a French periodical which reflects the aggressive colonial group in French administration. "Our new line to the Antilles," said this journal, "is principally a political line. The United States has made so much pro-American and anti-French propaganda in South America that the aviator from France—poeti-

[1] For an account of the inauguration of the Nyrba and its possible amalgamation with Pan American Airways, see *La Nacion* (Buenos Aires), January 12 and 13, 1930.

cally, we will call him a bird—must come to kindle the patriotic ardor of a population most sympathetic and alluring, but at present under the influence of the chase after the dollar." [1]

The Franco-American conflict in South America is the logical outcome of the meeting of two theories of commercial relations, each country pursuing a different theory. It is a conflict not limited to air-lines in South America, but also occurs in differences over the tariff, double taxation of foreigners, unequal taxation of foreign corporations, discriminatory rent laws and other questions now pending between the two nations. It is the old contest between the open door and the policy of reciprocity.

In other words, the American policy calls for equal treatment for all—the same principle demanded by John Hay in his celebrated open door policy in China thirty years ago. It means that all nations trading in a country shall have the same opportunities and suffer the same restrictions. But France takes the position that commercial favors should be accorded only in return for similar favors granted, nation to nation. Thus, the French Government has extended the free use of landing facilities at the airport Le Bourget in return for similar privileges afforded to the French by Great Britain at Croydon.

As a matter of international justice, there is much to be said in defense of either policy. In favor of the open door policy it is contended that invidious distinctions between commercial rivals do not make for comity of nations. On the other hand, it must be admitted that the receiving of favors without a *quid pro quo* seems unworthy of a great nation.

At any rate the present French policy is that of bargaining. What have you to offer for the privileges you demand? So far as aviation is concerned, this policy does not well comport with the theory of the French jurists that the sky is free. But it fulfills the needs of a practical diplomacy which has

[1] *La Vie Aérienne* (27, rue des Mathurins, Paris), January 5, 1930.

been aptly stated by an official in the Air Ministry in the following language:[1]

France is on the road to taking an outstanding place in the world's empire of the air. From now on she must have a foreign policy consistent with her situation and her future. What will that be?

Last summer the International Conference on Air Navigation decided on the interpretation of Art. 15 of the 1919 convention. This text, which at the present time constitutes the air law of most of the countries of the world, makes the establishment of air-lines dependent on the authorization of the countries flown over.

That gives us the immense advantage of being able to assure our advance on French routes and to receive foreign money in exchange sought by us to open up necessary routes over neighboring territories.

But it would be foolish to think that this restriction of the liberty of the air which we have not advocated can be long maintained. The present era of biddings will last only for a period. If this state of affairs procures immediate advantages for us, let us by all means make use of them, but at the same time we must remember that this is only a transitory stage.

Certainly, if we were to open our ports in Africa and Asia to anyone, without compensation, we would be betraying those men who, at the cost of their lives, endowed us with a colonial empire the future importance of which they did not even guess. But, if, on the other hand, through narrow nationalism we wish to keep for ourselves alone the use of our sky, we will divert from the more direct and convenient, though not obligatory, French routes the very traffic that we seek. We must take as our goal the development of French sectors of inter-continental routes so that when the air becomes as free as the sea is now these French lines will be preferred to other possible ones, in international traffic.

The problem raised by the conflict in the South American field is one of the most delicate questions in our present diplomacy—all the more delicate because of the virtue that

[1] Emmanuel Chaumié in *L'Europe Nouvelle*, February 8, 1930, p. 232.

exists in both of these two policies. The tragedy of international conflicts, as Hegel has said, consists not in the fact that two great nations may quarrel, but that both nations may be right. The problem now confronting diplomacy is to seek adjustments that will be so fair and advantageous that nations can not afford to refuse them.

III. PROGRESS TOWARD INTERNATIONAL CONTROL BEFORE THE GREAT WAR

PROPOSALS for the international regulation of aviation are not of recent origin. In the marvelous development of flying, the jurist has sought to keep pace with the inventor, and even outdistance him. The jurist is in truth not a mere pettifogging lawyer; he is a philosopher who understands the relations of man to man and of state to state, who seeks rules of conduct which will give liberty to all and render justice to all. Aerial navigation opened a new field in jurisprudence and international government. At first, it seemed possible by analogy to apply the rules of the land and of the sea. In time it became apparent, to the jurist at least, that aircraft required a special code of laws and a new means of international regulation.

The Five International Congresses on Aeronautics

In 1889, when the balloon was still the only successful means of flight, when Hargrave was still thinking in terms of flapping wings and when Otto Lilienthal was experimenting with his gliders, the first international aerial congress met in Paris. It had been called by a decree of the French Government in connection with the Universal Exposition of 1889 at Paris, and assembled in a room of the flamboyant Trocadero erected for the exposition. Delegates were in attendance from Brazil, France, Great Britain, Mexico, Russia and the United States.

Although summoned by a French ministry, the International Congress of Aeronautics was not a public conference in the sense that the delegates were representatives of their Governments with full powers to negotiate. The congress was, in this respect, semi-public. Its attention was devoted to the entire range of aeronautics, both practical and scientific, with some account taken of legal problems.

Several juridical questions were on the agenda such as: (1) should governments license civil aviation? (2) Should there be special legislation to regulate responsibility of aviators toward their passengers, the public and the owners of the land where descent is made, or should the usual rules of law apply? (3) Should the salvage of aerial wrecks be governed by maritime law? (4) Should there be new rules for establishing the fact of the absence or death of lost aviators? (5) Should the rule of war be changed whereby military authorities refuse the status of belligerents to aviators and treat them as spies.[1]

The first of these questions was answered in the affirmative, the others were referred to a Permanent International Commission of Aeronautics. In 1890, a second congress met in Paris. Belgium, Cuba, Ecuador, France, Great Britain, Mexico and the United States were officially represented, while unofficial delegates came from Austria, Germany, Italy, Rumania, Russia and Sweden.[2] A third congress met in Milan in 1906, a fourth at Nancy in 1909, and a fifth at Turin in 1911.[3] While the main emphasis at all of these congresses was on the mechanics of flying, yet governmental questions were often discussed, in particular, the subjects of air collisions, customs, responsibility for criminal acts, damages caused by objects thrown overboard and freedom of passage over territory.

[1] Ministère du Commerce, de l'Industrie et des Colonies, *Congrès International d'Aéronautique tenu à Paris du 31 Juillet au 3 Août 1889: Procès-Verbaux Sommaires* (Paris, Imprimerie Nationale, 1889), p. 3. See also the monthly periodical *L'Aéronaute* (22nd year), July-November, 1889, p. 156-160, 165-214, 217-276.

[2] Ministère du Commerce, de l'Industrie, des Postes et des Télégraphes, *Congrès International d'Aéronautique tenu à Paris du 15 Septembre au 21 Septembre, Procès-Verbaux Sommaires* (Paris, 1890), p. 9-11.

[3] At Milan, the Governments of France, Italy, Spain and Sweden were officially represented, while Austria, Belgium, England, Rumania and the United States were the principal states that sent unofficial members. At Nancy, the Governments of Belgium, France, Italy, Russia and the United States sent official representatives and Germany unofficial. See *Congrès International d'Aéronautique, Nancy, 18-23 Septembre 1909, Procès-Verbaux, Rapports et Mémoires,* (Paris, 1909), p. 13-15. At Turin, official delegates came from Argentina, Belgium, Spain, France, Great Britain, Italy, Norway, Russia, United States and Uruguay. See *Congrès International d'Aéronautique, Turin, 25-31 Octobre 1911, Procès-Verbaux, Rapports et Mémoires* (Turin, 1912), p. 20-22.

Proposals of the Jurists for a Code of Air Law

Aeronautical regulation soon claimed more attention from the jurists. In 1880, the Institut de Droit International, a private association of eminent jurists from nearly every civilized country, in its Oxford session, included the subject of aviation in its draft project of a convention on the laws and customs of war on land, giving aviators the rights of belligerents in time of war and opposing the practice of subjecting them to summary execution as spies.[1] A broader aspect of the question was attacked by Paul Fauchille in the session of the Institut which met at Neuchâtel in 1900, when he called the attention of jurists to the need for an international code of air law. In the following year he published his epoch-making study of the *Domaine Aérien et le Régime Juridique des Aérostats*. Then, at the session of the Institut in Brussels in 1902, he laid down his celebrated thesis:[2]

> The air is free. The states have no authority over it in time of peace or in time of war other than that which is necessary for their own preservation.

Sixteen nationalities were represented at the session of the Institut which met at Ghent in 1906 when Fauchille and Ernest Nys defended the well-known resolution asserting freedom of the air. In opposition, the distinguished British jurist, John Westlake, offered a resolution to the effect that: "The state has a right of sovereignty over the aerial space above its soil, saving a right of inoffensive passage for balloons or other aerial machines and for communication by wireless telegraphy." Westlake's resolution was rejected by a vote of 9 to 14, and the Institut pronounced in favor of Fauchille's doctrine.[3]

Five years later at the Madrid session of the Institut, Fauchille reported a project of a code containing 28 articles

[1] *Annuaire de l'Institut de Droit International*, 1880, V. p. 163. See also Carnegie Endowment for International Peace. *Resolutions of the Institute of International Law* (New York, 1916), p. 31.

[2] *Annuaire*, 1902, XIX, p. 19.

[3] *Annuaire*, 1906, XX, p. 327-328.

on aerial law in time of peace and 30 articles on aerial law in time of war.[1] Debate on these drafts resulted in the adoption of the following principles:[2]

Aerial Law in Peace Time

1. Aircraft are distinguished as public aircraft and private aircraft.

2. Every aircraft must have a nationality, and one only. This nationality will be that of the country in which the aircraft has been registered. Every aircraft must bear special marks of identification.

The state in which registration is applied for determines to what persons and under what conditions registration will be granted, suspended or withdrawn.

The state registering an aircraft belonging to an alien can not, however, claim to protect such aircraft in the territory of the owner's state as against any laws of that state forbidding its nationals to have their aircraft registered in foreign states.

3. International aerial circulation is free, saving the right of subjacent states to take certain measures, to be determined, to insure their own security and that of the persons and property of their inhabitants.

Aerial Law of War

Air war is allowed, but on the condition that it does not present for the persons or property of the peaceable population greater dangers than land or sea warfare.

This short document, practical and far-sighted in its general rules upon nationality and registration, impractical and absurd in its rule for warfare, formed an embryonic code of aerial law influenced chiefly by French ideas.

Two years later, the International Law Association—a legal society in which the British and American attitude predominated—debated in its annual conference at Madrid the ques-

[1] *Annuaire,* 1911, XXIV, p. 105-120. An English translation of this project is in *Resolutions of the Institute of International Law,* p. 243-256.

[2] *Annuaire,* 1911, XXIV, p. 346. Compare the English translation in *Resolutions of the Institute,* p. 171.

tion of the sovereignty of states over the air and adopted the following resolutions:[1]

1. It is the right of every state to enact such prohibitions, restrictions and regulations as it may think proper in regard to the passage of aircraft through the air space above its territories and territorial waters.
2. Subject to this right of subjacent states, liberty of passage of aircraft ought to be accorded freely to the aircraft of every nation.

This assertion of the absolute sovereignty of the subjacent state stood in sharp contrast to the French thesis.

Another attempt of jurists at codification was the International Juridical Congress for the Regulation of Air Locomotion held at Verona in 1910. Although the participants were chiefly from Italy, delegates from France, England, Monaco and Switzerland were present. This congress proposed a practical rule as to nationality, asserted the sovereignty of the subjacent state in the first place and freedom of the air in the second place, holding that the atmosphere is subject to police regulation by the state for the protection of public and private interests.[2]

International Juridical Committee of Aviation

In the meantime, French juridical interest in aviation led to the founding of a unique institution for the collective study of the subject. This was the Comité Juridique International de l'Aviation set up in 1909, the same year that Blériot flew across the English Channel. Its founders were two jurists by the names of Delayen and d'Hooghe who pointed out that the new invention of traveling would have an admirable and redoubtable effect upon the customs, the family, the public life and the government of all nations, and that there was imposed upon jurists the task of adapting the laws to the new social condition.[3] The purpose, then, of the Comité would

[1] International Law Association, *Report of the Twenty-Eighth Conference, Madrid, 1913*, p. 533, 545.

[2] *Journal du Droit International* (1911), XXXVIII, p. 1404-1406.

[3] Compare the statement of Edouard d'Hooghe in the *Revue Juridique Internationale de la Locomotion Aérienne* (1910), I, p. 5.

be to secure the adoption of an international code by all governments conformable to the needs and interests of aviation.

The organization was headed by a Directing Committee (Comité Directeur) with its seat in Paris and composed of an equal number of French and foreign members.[1] Local committees were established in foreign countries and in French departments and colonies. The local committees chose their own chairmen and discussed all phases of aerial law, reporting their decisions to the committee in Paris, which examined the national projects and submitted them to the ratification of a congress of all the committees, in which each state was represented by one vote.

The first congress of the new organization was held in the Trocadero in Paris in 1911 under the presidency of Alexandre Millerand. Two other congresses were convoked previous to the Great War, one at Geneva in 1912, and the other in Frankfurt-am-Main in 1913. By this time, the three congresses had proceeded so far as to frame a part of an aerial code which included the following subjects: (1) general principles of air law, (2) nationality and registration of aircraft, (3) law of landing, (4) jettison, (5) wrecks, (6) aerial jurisdiction, (7) proprietorship of the air, and (8) damages. The Comité and its congresses stood for freedom of the air. At the first congress it was held that universal agreement would be impeded if the doctrine of state sovereignty over the air were admitted.[2]

National Legislation

In the meanwhile the statute books of various states recorded national legislation affecting aviators, both citizens

[1] The American committee consisted of: James Brown Scott, national delegate; Charles F. Beach, national rapporteur; Arthur K. Kuhn, Simeon E. Baldwin, Denys P. Myers, George Whitelock, William W. Smithers, Ambrose Kennedy.

[2] Minutes of the first congress, *Revue Juridique Internationale de la Locomotion Aérienne*, April, 1912, p. 132-145.

and aliens. Acts were passed by the legislatures of Brandenburg and Prussia in 1910. The first British act, the aerial navigation act, became law on June 2, 1911, followed by another act of Parliament on February 14, 1913. And the first French decree was issued by the Ministry of the Interior on November 21, 1911. In the same year legislation was passed by three of the commonwealths in the United States—Connecticut, Pennsylvania and California, and by Massachusetts in 1913. The first Austrian legislation was a decree of the Ministry of the Interior on December 21, 1912. Legislation in Italy was delayed until after the outbreak of the Great War.[1]

A study of this legislation indicates that the doctrine of freedom of the air had made little headway with governments, all of which made the most unequivocal claim to absolute sovereignty over the air above their territory. In all this legislation there was a general similarity in regard to the question of nationality but no agreement upon some of the other subjects found in the code of the International Juridical Committee of Aviation or the excellent project for national legislation presented to the French Ministry of Public Works in March, 1910, by the Aero Club of France.[2]

The Hague Conferences

The initial governmental progress toward international regulation of aviation appeared in the realm of war law. In 1899, the first Peace Conference met at The Hague. Called

[1] Citations for national legislation are as follows: Austria—Decree of the Ministry of the Interior, December 21, 1912, *Reichsgesetzblatt im Reichsrate*, 1912, no. 240, p. 1224; France—Decrees of the Ministry of Public Works, November 21, 1911 and December 17, 1913, *Journal Officiel, Lois et Décrets*, November 25, 1911, p. 9347-9349, and December 25, 1913, p. 11038-11053; Great Britain—Acts of Parliament, June 2, 1911 and February 14, 1913, *Public General Acts*, 1 & 2 George V, Ch. IV and 2 & 3 George V, Ch. XXII; Italy—Royal Decree of September 3, 1914, *Raccolla Ufficiale delle Legge e dei Decreti de Regno d'Italia* (Rome, 1914), vol. iv, no. 1008, p. 3332-3334; Massachusetts—Act of May 16, 1913, *Acts and Resolves of Massachusetts, 1913*, ch. 663, p. 609-612.

[2] For the code of the Comité Juridique International de l'Aviation, see *Revue Juridique Internationale de la Locomotion Aérienne* April, 1912, p. 168-171; for the project of the Aero Club, see *Ibid.*, 1910, p. 126-129.

by the Tsar of Russia to devise a system of disarmament, the conference applied itself to the more practical task of codifying the laws of war and neutrality and devising a system for the pacific settlement of international disputes. With magnificent courage the plenipotentiaries adopted a rule banning one phase of aerial war. The declaration read: "The contracting powers agree for a term of five years to forbid the discharge of projectiles and explosives from balloons or by other new methods of similar nature."[1] The declaration was to be binding on the contracting parties only in case of war among themselves; if a belligerent state were joined by a noncontracting state, the obligation of the declaration was not applicable.

The signatories were: Austria-Hungary, Belgium, Bulgaria, China, Denmark, France, Germany, Great Britain, Greece, Italy, Japan, Luxemburg, Montenegro, the Netherlands, Norway, Persia, Portugal, Rumania, Russia, Siam, Sweden, Switzerland, Turkey and the United States. Most of these ratified the declaration.[2] All this took place, however, before the Wright brothers made their epoch-making flight of twelve seconds at Kitty Hawk.

The declaration of 1899 had expired when the Second Hague Conference assembled in 1907. In the meantime, the Wright brothers had proved the possibilities of sustained flight in the airplane, Count Zeppelin had maneuvered his giant dirigible over Lake Constance, Santos-Dumont had circled the Eiffel Tower, while the United States War Department had offered $25,000 for a military plane that would carry two men and sufficient fuel for 125 miles, fly ten miles at a stretch, and maintain a speed of 40 miles an hour. At the conference of 1907, the declaration banning the discharge of projectiles from aircraft was again proposed. Many of the small states

[1] Ministère des Affaires Étrangères, *Conférence Internationale de la Paix: La Haye 18 Mai-29 Juillet 1899* (The Hague, 1899), pt. 2, p. 252-253.

[2] Compare Denys P. Myers, *The Record of The Hague*, p. 14 (World Peace Foundation, Pamphlet Series, IV, No. 6, pt. III); Carnegie Endowment for International Peace, *The Hague Convention and Declarations of 1899 and 1907* (New York, 1915), p. 230-232.

hastened to sign; but the large ones held back.[1] Thus when the Great War broke out there was little specific international legislation restricting one of the most destructive weapons of war ever invented.

International Conference of Air Navigation, 1910

Returning to the field of aviation in peace time, the fact should be mentioned that France took the lead in the work of securing an international code of air law. In May, 1910, the International Conference of Air Navigation, summoned by invitation of the French Government, met at the Ministry of Foreign Affairs in Paris. Eighteen European states were represented, including Austria-Hungary, Belgium, Bulgaria, Denmark, France, Germany, Great Britain, Italy, Monaco, the Netherlands, Portugal, Rumania, Serbia, Spain, Sweden, Switzerland and Turkey. The distinguished French jurist, Louis Renault, presided over the conference and the equally renowned German judge, Dr. Kriege, presided over the most important commission of the conference.

Careful preparation had been made on the part of the French to insure successful negotiation. A questionnaire had been prepared by an interministerial commission to serve as a basis for discussion at the conference.[2] This questionnaire had been circulated among the states, which had answered in memoranda. The Germans, in particular, had replied with a complete draft for an international convention of 43 articles and two annexes.[3] Hence, views were known in advance and reconciliation of divergent views facilitated.

The discussion was limited to air law in peace, and no rules regarding belligerents and neutrals were taken up. General agreement was secured upon principles in a draft convention

[1] Ministère des Affaires Étrangères, *Deuxième Conférence Internationale de la Paix, La Haye, 15 Juin-18 Octobre 1907, Actes et Documents* (La Haye, Imprimerie Nationale, 1907), I, p. 87-88, 711-719; III, p. 148-159.

[2] *Conférence Internationale de Navigation Aérienne, Exposé des Vues des Puissances d'après les Mémorandums adressés au Gouvernement Français* (Paris, Imprimerie Nationale, 1909), p. 9-10.

[3] *Exposé des Vues*, p. 79-90.

of 55 articles and three annexes treating such questions as nationality and registration of aircraft, certificates of navigability, licenses of pilots and mechanics, rules for departure and landing, customs and tariffs, and rules regarding public aircraft.[1] Nevertheless, the conference broke up without the signing of a treaty. The rock on which it split was the question of sovereignty over the air.

The French delegation had presented a memorandum admitting complete freedom of aerial movement in the words of Paul Fauchille and the Madrid session of the Institut.[2] The Germans also proposed a wide liberty in Art. 11 of their draft project which read:[3] "The aircraft of a contracting state are authorized, in principle, to effect their departure and landing in the territory of another contracting state, and to pass above its territory. They shall however submit to the restrictions of the following articles." The 12th article admitted the right of the state to impose rules for its own security and for the protection of persons and property, which rules were to apply equally to all aircraft of the contracting states. The 14th article declared that the establishment of international routes of air communication depended on the assent of the interested states.

To these views the British delegation, headed by Admiral Gamble, made the following reply:[4]

1. Having regard for municipal legislation and decisions of British courts, abstract authorization in general terms permitting aircraft to navigate above a foreign territory or to land will not be recognized and could have no sanction in English law. Consequently, the English delegation can not accept the first proposition of the German delegation in view of the impossibility of knowing in advance the attitude of the British

[1] *Conférence Internationale de Navigation Aérienne, Procès-Verbaux des Séances et Annexes, Paris 18 Mai-29 Juin 1910* (Paris, Imprimerie Nationale, 1910), p. 188-204; also Great Britain, Parliamentary Papers, *Report of the Civil Aerial Transport Committee*, p. 25-35 (Cd. 9218).

[2] *Procès-Verbaux*, 1910, p. 242-244.

[3] *Exposé des Vues, 1909*, p. 81-82; *Procès-Verbaux*, 1910, p. 239-242.

[4] *Procès-Verbaux*, 1910, p. 270.

tribunals when they would be called upon to apply such a declaration.

2. Besides, while wishing in every way possible to encourage and develop air navigation, it is evidently necessary to safeguard the interests and the sovereignty of the states and, although the German delegation doubtless admits this obligation, its propositions in this report seem to us to be incomplete.

The conference adjourned to meet in November. But the adjournment proved more than temporary. In spite of the solicitude of the promoters of the conference to hide the nature of the rupture, it became known that agreement could not be reached upon the question of freedom of the air. The British Admiralty and War Office were persistently opposed to any limitation upon the right of a state to close its air space to the entrance of the aircraft of any or all nations. The British public attitude was partly reflected in an article in the official organ of the Royal Aero Club of the United Kingdom which said in part:[1]

The break-up of the conference seems to have been caused by the attitude of certain powers, including Great Britain, who desire to retain the right to close their frontiers against the aerial vessels of one or all nationalities when they see fit, without any obligation to give a reason for taking such action. Negotiations are now said to be in progress between the various governments with a view to finding a way out of the *impasse* in which the conference finds itself.

Whatever the ultimate result of these negotiations may be, we think it a cause for congratulation that the British Government appears fully to recognize the imperative importance of starting well in this matter of the codification of international aerial law. There may be no great importance attaching to the exact point which happens to have brought the conference to an untimely end. It is rather the principle underlying the action leading up to continued postponement with which we are concerned. Too long has the Government appeared to look upon aerial navigation as something too far removed for serious notice, and to regard the aerial enthusiast as a person with a

[1] *Flight*, December 10, 1910, p. 1004.

bee in his bonnet. The measured words of Admiral Gamble's resolution, anent profound study on the part of the Government, indicates very clearly that the old-time policy of *laissez-faire* in matters aerial is past and done with.

In the following year Parliament passed the British aerial navigation act placing foreign aircraft under strict supervision and conferring power on the Secretary of State for Home Affairs to exclude at his discretion all foreign aircraft.[1]

In the realm of unilateral negotiation, France and Germany concluded a provisional accord at Berlin on July 26, 1913, accepting certain rules applicable to the aircraft of each nation while in the territory of the other.[2]

In one sense, the conference of 1910 marks the end of the first phase of the development of international regulation of aviation. The hasty attempt to secure an international declaration for complete freedom of the air before unfavorable national legislation had time to crystallize proved to be a failure. Perhaps it would have been unwise to circumvent national prejudices in this fashion, and perhaps the convention, if signed and ratified, would have been more honored in the breach than in the observance. At any rate, the insistence of the originators of the conference upon a declaration of freedom of aerial circulation and the resistance of the British to such a declaration blocked the opportunity to secure at that time an international convention which included many rules upon which there was general agreement.

In a theoretical manner the French jurists had been far-sighted. The trend of civilization for centuries has been toward freedom of communication both on the sea and on the land. The new mode of transit was destined to make a powerful appeal for international cooperation in opening new highways of commerce and intercourse. At the conference of 1910, the French delegates even went so far as to point out the progress made in international organization,

[1] *Public General Acts*, 1 & 2 George V, Ch. IV. The act of 1911 was amended and expanded by the act of 1913, 2 & 3 George V, Ch. XXII.

[2] *Journal Officiel, Lois et Décrets*, August 12, 1913, p. 7334-7335. Compare the note in *Revue Générale de Droit International Public* (1913), XX, p. 395.

as instanced by the commissions already existing, and had proposed to set up an international aerial commission.[1] This proposal was not included in the draft convention. It was finally realized after the Great War when the opportunity offered by the Peace Conference was seized to establish the first international régime for the air.

[1] *Procès-Verbaux*, 1910, p. 51-58.

IV. THE AIR NAVIGATION CONVENTION OF 1919

THE Great War brought a temporary end to the collaboration of all nations toward the government of the air. On the other hand, the war caused an enormous development in the mechanics of flying and attracted attention in the most spectacular manner to the possibilities of aircraft in the service of mankind.

Aeronautical Commission of Peace Conference

Problems of air control thrust themselves upon the Peace Conference in Paris, first in connection with the complete disarmament of Germany and its allies by land and sea and air, and second in regard to commercial aviation with respect to Germany in the future. There was general agreement that Germany should be compelled to surrender, as it had undertaken in the armistice, all the military planes in its possession; and it also appeared correct to prohibit the manufacture of German military planes for all time to come. But when it was proposed to bar all aircraft activity in Germany a new problem confronted the negotiators—a problem of far-reaching significance.

Thanks to President Wilson, Lord Robert Cecil and General Smuts, a large degree of statesmanlike idealism had been brought to the Peace Conference. There was aspiration not merely to close up the present war with Germany, but also to build international relations upon a more permanent basis and to eradicate the causes of all war. Progressively with the development of the idea of the League of Nations, the conference became conscious of its inability to settle many of the economic and political questions in an arbitrary manner at Paris. Statesmen saw the convenience, if not the wisdom, of handing over many of the difficult problems of readjustment to the League of Nations or to special commissions for

future settlement or regulation. The question of the régime of the air fell in this category.

During the latter part of the war, the air forces of the Principal Allied and Associated Powers were coordinated by means of an organization, a part of the Supreme War Council, known as the Interallied Aviation Committee. At the Peace Conference, the secretary of this organization (Captain Boulanger) together with a young aviation officer (Captain Albert Roper) brought forward the idea of perpetuating this organization as an instrument of international regulation.[1] The suggestion was approved by Clemenceau. An instrument of this nature, at least a temporary one, fitted in with the needs of the conference, and met the approval of President Wilson, Premier Orlando and Lord Milner, representing the British Empire.

Early in the conference, the duty of drafting air clauses for the peace treaty had been assigned to the Naval, Military and Air Committee.[2] But on March 12, 1919, on the motion of A. J. Balfour, the conference established the Aeronautical Commission of the Peace Conference, charged with the duty of drafting not only the air clauses of the treaty of peace, but also a convention to govern international aviation in time of peace.[3] Under Mr. Balfour's motion, the British Empire, France, the United States, Italy and Japan were members of the Aeronautical Commission. At the meeting of March 15, representatives of the small states—"powers with limited interests"—were added, including Belgium, Brazil, Cuba, Greece, Portugal, Rumania and Serbia. Thus was initiated the commission which eventually drafted the first international aerial convention.

It is to be noted that the proposed aerial convention was to be separate from the treaty of peace. The experienced

[1] Compare the statement by Captain Roper in International Commission for Air Navigation, *Extraordinary Session of June 1929, Draft Minutes*, p. 145.

[2] David Hunter Miller, *My Diary at the Conference of Paris, with Documents* (New York, Appeal Printing Company, 1924-1927), XIV, p. 384.

[3] Miller, *My Diary, with Documents*, XV, p. 352.

diplomat, Pichon, had pointed out, in the Supreme Council, that it was necessary to disjoin the air clauses pertaining to peace with Germany from the rules that properly belong to a general air convention.[1] He had called attention to the difficulties that had beset the drafting of such a convention in the past, and indicated that the attempt to incorporate an aerial convention in the treaty of peace would indefinitely postpone the signing of the treaty. These views prevailed.

It is a matter of some reproach that the drafting of the aerial convention was placed in the hands of a commission composed exclusively of the victors of the Great War. But it is doubtful whether technical delegates who had recently been enemies unto death would have been able to reach decisions around the same table. On the other hand, the psychological time had come for securing agreement between the allies, particularly Great Britain and France; all the more so, because of the fact that after the experience of the Great War, the French were in no mood to press Fauchille's doctrine of the freedom of the air. The negotiators believed in taking the tide in the affairs of nations that leads on to immediate achievement.

Drafting the Convention of 1919

With admirable precision the Aeronautical Commission began its work. The commission, as we have already seen, consisted of five large states and seven "powers of limited interests." The drafting of the convention was almost entirely the work of the great states. Belgium alone was represented on the subcommissions, and then only on one of the three. With the exception of Bustamante of Cuba, Chiesa of Italy and Yamakawa of Japan, all of the chief delegates were military officers. Yet the conference had the services of very able legal talent including Messrs. d'Aubigny and de Lapradelle of France, Buzzati of Italy and White Smith of Great Britain who formed the Legal Subcommission.

[1] Miller, *My Diary, with Documents*, XV, p. 346.

The commission first drew up a list of the principles which should govern the drafting of the convention. These principles, 12 in number were as follows:[1]

1. Recognition of (1) the principle of the full and absolute sovereignty of each state over the air above its territories and territorial waters, carrying with it the right of exclusion of foreign aircraft, and (2) the right of each state to impose its jurisdiction over the air above its territory and territorial waters.

2. Subject to the principle of sovereignty, recognition of the desirability of the greatest freedom of international air navigation in so far as this freedom is consistent with the security of the state, with the enforcement of reasonable regulations relative to the admission of aircraft of the contracting states and with the domestic legislation of the state.

3. With regard to domestic regulations relative to the admission and treatment of the aircraft of the contracting states, recognition of the principle of the absence of all discrimination on the ground of nationality.

4. The recognition of the principle that every aircraft must possess the nationality of the contracting state only and that every aircraft must be entered upon the register of the contracting state, the nationality of which it possesses.

5. The following provisions are recognized as desirable from an international point of view to insure the safe conduct of aerial navigation:

I. Regulations for compulsory certificates of airworthiness and licenses for wireless equipment, at least for aircraft used for commercial purposes. Mutual recognition of these certificates and licenses by the contracting states.

II. Regulations for compulsory licenses of pilots and other personnel in charge of aircraft. Mutual recognition of these licenses by the contracting states.

III. International rules of the air, including international rules as to signals, lights, and for the prevention of collisions. Regulations for land and on the ground.

6. Recognition of the principle of special treatment for military, naval and state aircraft when they are in government service.

7. Recognition of the right of transit without landing for international traffic between two points outside the territory

[1] International Commission for Air Navigation, *The International Air Convention of 13th October 1919: Its Preparation; Its Entry into Force; Its Application* (Paris, May, 1929), p. 2-3.

of a contracting state, subject to the right of the state traversed to reserve to itself its own internal commercial aerial traffic and to compel landing of any aircraft flying over it by means of appropriate signals.

8. Recognition of the right of use, by the aircraft of all the contracting states, of all public aerodromes upon the principle that charges for landing facilities should be imposed without discrimination on the ground of nationality.

9. Recognition of the principle of mutual indemnity between the contracting states to cover damage done to person or property in one state by Government aircraft of another state.

10. Recognition of the necessity of a permanent International Aeronautical Commission.

11. Recognition of the obligation of each contracting state to give effect to the provisions of the convention by its domestic legislation.

12. Recognition of the principle that the convention does not affect the rights and duties of belligerents or neutrals in time of war.

These principles served as the guide to the three subcommissions, one on technical matters, the second on legal, and the third on military, which drafted the text of the convention and its annexes. The Legal Subcommission drew up the text of the articles of the convention and Annex H, while the Technical Subcommission prepared the text of the other annexes. The three subcommissions examined the convention and its annexes as a whole, and subsequently it was amended and adopted in plenary session.[1] On September 27, the completed convention was presented to the Supreme Council by Captain Roper, reporter-general of the commission. On October 13, it was adopted and opened to signature by the plenipotentiaries of the 32 Allied and Associated Powers represented at the Peace Conference.

In many respects the convention is the most remarkable treaty ever drawn up by a conference composed chiefly of military officers. It should be remarked that although French influence extended more fully than that of any other state, yet, France was not represented by any of the great jurists like

[1] Compare *Convention of 13th October 1919: Its Preparation*, p. 5.

Renault, Fauchille, Nys, Henry-Coüannier and Millerand who a few years previously had played the leading rôle in developing French concepts of air law. Renault had died, but the other jurists were alive. The convention of 1919 was the product of interallied cooperation in the Great War. Ten years after the conference, Captain Roper attributed its success to the fact that most of the members had learned, because of their experience as members of the Interallied Aviation Committee, how to work rapidly and harmoniously together. Continuing, he stated: "The military men pressed matters forward, perhaps bustling the jurists a little. Certain aspects of the question were not touched upon which in 1910 had given rise to considerable discussion, and it was no doubt thanks to this push, this ardor, this comradeship of the delegates, that the commission was able to lay down principles in a day, to set up the framework of the convention in a few weeks and to draw it up in less than four months." [1]

These remarks which were made on the occasion of the Extraordinary Session of the International Commission for Air Navigation in June, 1929, brought the rejoinder from Signor Giannini:[2] "I take the liberty of reverting to a few words somewhat acerb which the Secretary-General pronounced with regard to the jurists, for I desire to remark—I who sometimes take a pleasure in criticising the jurists, my confrères—that the part which is really well done in this convention is the juridical part. For once, therefore, the politicians did not have the best of it, inasmuch as the part of the convention which lives and which will perhaps outlive to-morrow, is the legal part of that document."

Every clause in the convention bore the impress of the work of experts well versed in the mechanics of flying. The details were mainly concerned with practical problems of the operation of aircraft; while the legal rules were deftly framed. There were serious flaws in the convention, particularly in regard to relations with the former enemy coun-

[1] *Session of June 1929: Draft Minutes*, p. 145.

[2] *Session of June 1929: Draft Minutes*, p. 149.

tries, but, on the other hand, the treaty provided for a system of amendment that looked toward future development.

Analysis of the Convention of 1919

The convention of 1919 applied only to peace conditions. It laid down no rules of war and did not affect the relations of states as belligerents or as neutrals. In its structure, the convention followed the most approved technic in treaty-making. General principles were laid down in a convention of 43 articles; details were relegated to eight annexes. The convention could be modified only by consent of all the signatory states; but the annexes (except H) could be amended by vote of a commission provided three-fourths of the total possible votes were cast in favor of such modification (see Art. 34 *c* and *g*). Moreover, in order to facilitate amendment as well as to carry out administrative features, the convention established an International Commission for Air Navigation, representing each contracting state.

In its very first clauses, the convention ended, for a time at least, the controversy over freedom of the air which had broken up the conference of 1910. The convention recognized the complete and exclusive sovereignty of every state over the air space above its territory and its territorial waters. But each contracting state undertook in time of peace to accord freedom of innocent passage above its territory to the aircraft of the other contracting states provided the conditions of the convention were observed. The convention thus adopted the identical principle proposed by Professor Westlake in the 1906 meeting of the Institute of International Law which had been rejected in favor of the liberal rule of Paul Fauchille.

It was held by the negotiators, however, that the recognition of the right of innocent passage was a sufficient counterbalance to the admission of complete sovereignty, particularly in view of the provision of Art. 2 which provided that regulations made by a contracting state as to the flight of air-

craft of other contracting states over its territory must be applied without distinction. Moreover, while every state was entitled for military reasons or in the interest of public safety to prohibit the aircraft of the other contracting states from flying over certain areas of its territory, it was agreed that the prohibition must extend to the aircraft of its own nationals. This provision would balk the temptation to declare prohibited zones of undue size.

As a means of forcing as many states as possible among the Allied and Associated Powers to adhere to the convention, the fifth article provided: "No contracting state shall, except by a special and temporary authorization, permit the flight above its territory of an aircraft which does not possess the nationality of a contracting state." This ill-advised attempt to compel cooperation was eminently characteristic of the mentality of the postarmistice period.

More sane and practical general rules were laid down on the subject of nationality and registration—rules advocated long before by Fauchille and the French jurists. Aircraft must possess the nationality of the state in which they are registered; an aircraft must be registered in only one state; and all aircraft must bear marks of identification. The contracting states also were to transmit monthly to the International Commission for the information of all contracting states copies of registrations, cancellations of registrations entered on their official registers during the month.

Certificates of airworthiness and licenses of pilots were to be issued by the state whose nationality was claimed by the aircraft in accordance with regulations stipulated in the annexes and modified by the International Commission. Certificates of airworthiness and pilot licenses issued by the state whose nationality was claimed for the aircraft must be recognized as valid by the other states. But each state had the right to refuse to recognize certificates and licenses granted to one of its nationals by another contracting state (Art. 13). To an Anglo-Saxon mind, it seems illogical for

a state to prohibit flights above its territory by one of its own citizens who happens to have a foreign license while permitting flights by a foreign pilot with a license of the same character. Both pilots have measured up to the same standard of competency. Nevertheless, according to the continental legal system, the state may have reasons for compelling its citizens to take out licenses within the motherland. This principle of the *lex patriae,* in opposition to English common law, was evidently a concession to Latin influence in the conference.[1]

In regard to navigation above the territory of a state, Art. 15 provides that aircraft of a contracting state has the right to cross the air space of another state without landing. It is under obligation, however, to follow the route fixed by the subjacent state, and it must land if ordered to do so by the prescribed signals, or if there were a general requirement for airplanes crossing the border to land in a particular aerodrome for inspection.

The establishment of international airways is subject to the consent of the states flown over. Furthermore, each contracting state has the right to make restrictions in favor of its national aircraft in connection with commercial transportation wholly within its own territory (Art. 16). Such reservations must be immediately published and communicated to the International Commission for the information of other states. While this liberty of action might lead to abuse, a make-weight is found in the provision that such restrictions would automatically apply to the aircraft of the restricting state when flying over other states.

A proper provision is made to protect all rights in the matter of claims upon foreign aircraft for infringement of patent. Correct rules were formulated as to the papers and log books that aircraft must carry, and as to the verification of documents by the official inspectors (Arts. 19-21). An obligation is put upon every state to the effect that public

[1] Compare Arthur K. Kuhn, "International Aerial Navigation and the Peace Conference," *American Journal of International Law,* July, 1920, p. 373.

airdromes must be open to foreign aircraft at the same rates as to the nationals of that state.

The carriage by aircraft of explosives and of munitions of war is forbidden in international navigation (Art. 26). If a state restricts the transportation of other articles, notification of such prohibition must be sent to the International Commission, which shall communicate this information to the other contracting states. A chapter of the convention is devoted to state-owned aircraft, including military planes, applying principles quite analogous to the status of public ships in territorial waters. The contracting states agree to cooperate in the collection and dissemination of statistical and meteorological information. Customs regulations are set forth in Annex H, although states are free to conclude special protocols between themselves in respect of customs, police and posts (Art. 36).

In case of disagreement between two or more states relating to the interpretation of the convention, the dispute is to be referred to the Permanent Court of International Justice.

Finally, the enemy states in the Great War (Germany, Austria, Hungary, Bulgaria and Turkey) as well as Russia might adhere to the convention only after becoming Members of the League of Nations or after January 1, 1923, provided adhesion of any such state were approved by the Allied and Associated Powers. After January 1, 1923, this adhesion was to be admitted only if accepted by three-fourths of the signatory and adhering states voting in the International Commission.

Such, in brief, were the provisions of the convention of 1919. In spite of several glaring defects the convention was a precious basis for international regulation of the air. It was one of the permanent contributions of the Peace Conference of Paris.

Ratification of the Convention

The convention was opened to signature on October 13, 1919. Twenty-six of the 32 states enumerated in the pre-

amble signed the document within the time limit named therein.[1] But ratifications came slowly. Even the French Chambers allowed nearly two years to elapse without final action.

The delay was due to formidable objections made by the states that had not participated in the Great War and that had been specifically invited by Art. 41 of the convention to adhere to the same. The first of these criticisms to be formally presented was a memorandum addressed by the Swiss Government to the Quai d'Orsay on November 30, 1919. Herein it was pointed out that in adhering to the convention, Switzerland or any other ex-neutral state would be obliged to engage itself, in pursuance of Art. 5, to close its air space to the aircraft of Germany and its former allies. Consequently, Switzerland would probably find itself, in turn, excluded from flight over the central European states, inasmuch as Switzerland would not have the privilege of flying over the conquered territories which was granted by Art. 313 of the treaty of Versailles to the Allied and Associated Powers.

There was no gainsaying that the Swiss remonstrance exposed a serious weakness in the convention. In January, 1920, the objection was laid before the Conference of Ambassadors, which had succeeded to the Supreme Council in winding up the affairs of the Allied and Associated Powers. The suggestion was brought forward that an amendment of Art. 5 of the convention might be the means of eliminating the inequality of the ex-neutral states. But it was evident that this was impossible. Under Art. 34 of the convention no amendment of the convention could be offered to the signatory states until approved by the International Commission for Air Navigation, while the commission could not

[1] These Governments were: the United States, Belgium, Bolivia, Brazil, British Empire, Australia, South Africa, New Zealand and India, China, Cuba, Czechoslovakia, Ecuador, France, Greece, Guatemala, Italy, Japan, Yugoslavia, Panama, Poland, Portugal, Rumania, Siam and Uruguay. Of the remaining six states, Peru, Nicaragua and Liberia subsequently adhered to the convention; while Haiti, Honduras and the Hejaz neither signed nor adhered.

come into existence until the convention was ratified and entered into force.

The best solution that the Conference of Ambassadors could find was the awkward arrangement of an additional protocol signed on May 1, 1920, granting the right of derogations from the obnoxious fifth article.[1] This protocol was ratified by the signatory states along with the convention. It permitted the ex-neutral states to have aerial agreements with the ex-enemy states pending some satisfactory amendment of the convention of 1919. The arrangement was an embarrassing and almost undignified solution of an absurd situation, but as Secretary-General Roper has pointed out it gave proof of the desire of the authors of the convention to correct their mistake.[2]

In the meanwhile, further objections to the convention were presented. In December, 1919, representatives of Denmark, Finland, the Netherlands, Norway, Spain, Sweden and Switzerland met at Copenhagen to study the convention. As a result, these governments declared that they could adhere to the convention only after it had been amended so as to (1) recognize that all the contracting states should have the right to conclude special treaties with states not parties to the convention, and (2) grant equal voting rights to all the states represented on the International Commission for Air Navigation.

It was not until June 1, 1922, that sufficient states had ratified the convention to warrant a deposit of ratifications. Fourteen of the signatory states participated in this event, including Belgium, Bolivia, the British Empire with Australia, Canada, New Zealand, South Africa and India, France, Greece, Japan, Yugoslavia, Portugal and Siam. Forty days later, on July 11, 1922, the convention came into effect for these 14 states and for Persia which had already adhered.[3]

[1] *Bulletin Officiel*, No. 10, June, 1926, p. 97.

[2] *Session of June 1929: Draft Minutes*, annex a, p. 2-3.

[3] *Bulletin Officiel*, No. 1, August 1922, p. 3-6.

On the same day the International Commission for Air Navigation assembled for its first session.

Among the questions examined by the International Commission at its first session was the Copenhagen declaration to which we have already referred. The first proposal as to amendment of Art. 5 of the convention was readily admitted. The second proposal for equal votes in the commission raised the delicate question of state equality which has embarrassed every attempt at creating international jurisdiction.

In regard to the air régime, some states had large air fleets and were undertaking large responsibilities in developing international traffic. Other states had small responsibilities. Was it not correct to give the former a larger voice in the international legislature? Perhaps compromise was possible.

A month after the adjournment of the first session of the International Commission the Copenhagen conference reassembled. As a result, the ex-neutral states (Spain excepted) proposed an arrangement whereby all states should have an equal voice in the International Commission, with the proviso that any majority vote to modify the annexes of the convention must include at least three of the great states. This compromise proposal greatly facilitated the discussion.[1] The two demands of the ex-neutral states were adopted by the commission and offered to the signatory states in the protocols of October 27, 1922, and of June 30, 1923, amending Arts. 5 and 34 of the convention. Ratifications were not secured until December, 1926, and shortly thereafter three of the ex-neutral states—Sweden, Denmark and the Netherlands adhered to the convention.

[1] Compare *Sessions of June 1929: Draft Minutes*, annex a, p. 4.

V. THE INTERNATIONAL COMMISSION FOR AIR NAVIGATION

ONE of the most admirable features of the convention of 1919 was the creation of the Commission Internationale de Navigation Aérienne (International Commission for Air Navigation) frequently referred to as C. I. N. A. or I. C. A. N.[1] In origin, this organization is the outgrowth of the Interallied Aviation Committee, an important cog in the machinery that won the war against Germany. In practice, it is the principal organ of an international arrangement requiring administrative, legislative and judicial agents. The judicial work of the air régime was assigned by the convention of 1919 to the Permanent Court of International Justice. The administrative and legislative functions were intrusted to C. I. N. A.

The Organization and Functions of the Commission

Treaties of regulatory nature should have a permanent administrative agency. This is one of the lessons of modern diplomacy. The idea is not new. The treaty of Paris of March 30, 1856, providing for the regulation of traffic on the Danube, established the European Commission, which has had a long and useful career. The universal postal convention of 1874 set up the International Bureau of the Postal Union with its seat at Bern; the railways transportation convention of 1890 created the International Railways Transport Office with its seat at Bern; while the sugar convention of 1902 established the Sugar Commission located at Brussels, which functioned until 1920. Before the war also there were telegraphic, literary, artistic and industrial property, weights and measures, sanitary, geodetic and other bureaus or commissions for the administration of conventions. French dele-

[1] In technical circles this body is usually called *Cina*, the pronunciation of the vowel in the first syllable being short.

gates at the Air Navigation Conference of 1910, in an admirable memoir, called attention to this form of international administration, and cited the organs already established. The commission proposed at that time was eventually realized by means of the air convention of 1919.

A glance at the convention of 1919 suffices to indicate that its operation properly requires a permanent organization for the following purposes: (1) to receive reports of the contracting states; (2) to transmit this information to the other states; (3) to revise the numerous and detailed rules in the annexes so that they will meet the rapidly changing conditions of aviation; and finally and most important of all, (4) to provide a means for the progressive revision of the text of the convention. These duties are placed upon the International Commission. The convention would have been incomplete without provision for such an institution.

An unhappy mistake was made in the organization of this instrument of the treaty. There was blatant inequality in the representation of states. The problem of equality of states has always been a perplexing question connected with all forms of international cooperation. In the League of Nations, the preponderance of the great states had been adroitly managed; every state had an equal voice in the Assembly, the vote of the British Empire counting no more than the vote of Albania, while a counterbalance was secured in the Council where the great states are permanently represented and nine out of 14 places are always filled by elected representatives of smaller states.

Two chambers of international delegates, however, would have been too clumsy for the administrative body of the air régime. Thus the commission was organized as a unicameral body. France, Italy, Japan and the United States were given two representatives on the commission; Great Britain, India and the Dominions each possessed one representative; all other states had only one representative apiece. Moreover, each of the five premier states (the British Em-

pire counting as one state) was to have as many votes as the number five was contained in the number of small states. The small states were to have one vote each. This cumbersome arrangement laid the convention open to the trenchant criticism of being in opposition to the democratic spirit of which the Allied and Associated Powers had been boasting. It is fortunate that at the fourth session of the International Commission at London in 1923, after the convention had been in force but a year, a resolution was adopted to amend the convention so that each state should have but a single vote.[1] The protocol to this effect was duly ratified and the amendment finally came into effect in December, 1926.

The leveling process was so drastic that even the British Empire possessed but a single vote. Such an arrangement, however, soon proved irksome to the Dominions. Surely Canada, Australia, South Africa, New Zealand and India are peers of Denmark, Persia, the Saar, Siam and Uruguay, each of which has a separate vote. Consequently, at the 17th session of C. I. N. A. in December, 1929, a protocol of amendment was adopted modifying Arts. 34 and 40 of the convention; and, if this protocol is ratified by all the signatory states the members of the British Commonwealth of Nations will possess an equal voice with all other states.[2]

Under the terms of the convention the International Commission was to be convened as soon as a majority of the signatory states had ratified. The majority, consisting of 14, was reached on the first deposit of ratifications on June 1, 1922. Accordingly, the commission assembled in Paris on July 11, 1922, the day on which the convention entered into force. The first session, under the presidency of Pierre-Etienne Flandin, drew up rules of procedure, established a permanent secretariat with headquarters in Paris, appointed

[1] *Bulletin Officiel*, December, 1922, No. 2, p. 38; June, 1923, No. 4, p. 16.

[2] Compare *Protocole relatif à des Amendments aux Articles 34 et 40 de la Convention portant Réglementation de la Navigation Aérienne en Date du 13 Octobre 1919* (Paris, 11 Décembre 1929), and Appendix, *infra*, p. 171.

six subcommissions for the study of technical questions and chose a secretary-general.[1]

The subcommissions included one for each of the following subjects: operations and materials, wireless, meteorology, medical aviation, legal questions, and maps.

Eighteen sessions of the commission have been held down to date, and include meetings as follows:

1. Paris, July 11-28, 1922.
2. London, October 25-27, 1922.
3. Brussels, February 28-March 2, 1923.
4. London, June 26-30, 1923.
5. Rome, October 26-31, 1923.
6. Paris, March 3-6, 1924.
7. Paris, October 10-14, 1924.
8. London, April 3-6, 1925.
9. Brussels, October 6-9, 1925.
10. Japanese Embassy in Paris, May 11-15, 1926.
11. Paris, November 3-5, 1926.
12. London, April 25-27, 1927.
13. Rome, October 24-28, 1927.
14. Geneva, June 8-11, 1928.
15. Brussels, March 21-23, 1929.
16. Paris, June 10-15, 1929.
17. Paris, December 10-11, 1929.
18. Antwerp, June, 1930.

The Work of the International Commission

The duties and powers of the commission are extensive. As succinctly stated in one of its official brochures:[2]

> The commission has to examine all proposals for amendments to the articles of the convention. No demand for modification can be considered, whatever its origin, without having been discussed by the commission.
>
> It is also competent to make, by its own motion, any modifications of the annexes to the convention; and its decisions, at the expiration of four months from the notification sent by the

[1] *Bulletin Officiel, August,* 1922, No. 1, p. 8-25.

[2] *Convention of 13th October 1919; Its Preparation; Its Entry Into Force; Its Application* (May, 1929), p. 9-10.

secretary-general to the Governments of the contracting states, become valid in respect to these states.

Charged, moreover, by various articles of the convention (Arts. 9, 15, 16, 27, 28, 36 and Annex H, par. 3) with the duty of communicating to the contracting states decisions taken by each one of them with regard to different matters of great importance to airmen, and of collecting and communicating (Art. 34, *d* and *e*) information of every kind concerning air navigation as well as all information relating to wireless telegraphy, meteorology and medical science which may be of interest to air navigation, the International Commission for Air Navigation has organized at its Secretariat a center of collection and dissemination of all these decisions, regulations and information.

The decisions referred to in the convention are centralized at the Secretariat and notified direct to the Governments of all the contracting states. They are also published periodically in the *Bulletin of Information* of the commission together with the regulations and information above mentioned. The bulletin is published weekly in two languages—French and English.

The *Bulletin of Information* is one of the most useful governmental documents issued at the present day for national administrative authorities; it brings immediate information to all the Governments of contracting states in regard to aviation—information essential to the proper execution of the convention and essential to the proper regulation of international flying. A brief synopsis of its five parts will help to illustrate the function of the commission:

Part 1. Conventions, Laws and Regulations, including conventions, agreements or arrangements relating to air navigation concluded between contracting states and noncontracting states in conformity with Art. 35 of the convention. Special protocols in respect of customs, police, posts and other matters of common interest in connection with air navigation, provided for in Art. 36 of the convention. National laws and regulations relating to the carriage and use of photographic apparatus in air navigation, prohibited areas, customs aerodromes, prohibited transport, the construction of machines, the issue of certificates and licenses, and rules of the air.

Part 2. Register of Aircraft, including registrations and cancellations of registrations entered on the registers of the

various states (communications provided for in Art. 9 of the convention).

Part 3. Lists of licenses issued by the different states, for pilots, navigators, ground engineers and others.

Part 4. General information including notices issued by contracting or noncontracting states regarding aerodromes and landing grounds, the condition of such aerodromes, danger areas, the creation or closing of landing grounds, the installation or demolition of air lights or W-T masts, the prices charged for fuel, the special rates for landing to be observed at certain aerodromes, the charges made for attendance at different aerodromes, the conditions for the use of certain military aerodromes, and wireless, meteorological and medical information.

Part 5. Air traffic statistics, including annual statistics officially published by the Governments.

The publication of this information proves of practical value to airmen. Consulting the pages of the weekly edition of the *Bulletin* they learn, for instance, that the Italian Ministry of Aeronautics has revised its prohibited areas and obligatory routes in crossing the Alps and flyers must take notice; that sheep are grazing on the landing field at Le Bourget and planes should be careful to avoid them; that the Cherbourg-Querqueville Aerodrome will be occupied by military formations on certain dates and private planes are barred; that plowing and leveling operations are in progress on the Croydon Aerodrome and pilots should avoid taxying beyond the boundary lights; that the Pisa Aerodrome is water-logged by heavy rains and is unfit for use; that the Rotterdam airlight is temporarily out of action; that the Italian Government has ordered a red flag to be displayed at the Furbara Aerodrome on the Rome-Civita Vecchia line whenever landing will be dangerous because of artillery fire; that Canada has organized a meteorological service and reports are obtainable at its offices in Toronto, Walkerville and St. Hubert, that a new system of air lights for night-flying has been installed along the Berlin-Hanover route; and that Denmark has issued a revised list of customs airdromes.

The information is often given in considerable detail. For

instance, the Greek Government, which has ever insisted on seemingly vexatious restrictions on foreign aircraft, issues new regulations applicable to airplanes on landing and leaving Greece; the *Bulletin of Information* publishes the regulations in full in French and English translations. Or, the Italian Government, by royal decree, proclaims a code of air regulations; this decree covering 86 pages is reprinted in French and English translations. Or, the German Reichsverkehrsministerium has announced new requirements for certificates of airworthiness; English and French translations of this decree are published.

There is no doubt but that this valuable system of collecting and transmitting information should be more fully developed. To do so would relieve the contracting states of the burden of numerous transmissions, difficult researches and duplication of translations. In the words of the secretary-general: "It is already manifest that the contracting states appreciate the importance of these exchanges and contribute more and more to their extension."

Decisions of the Commission

Beginning with the first session of the commission in July, 1922, numerous questions have been submitted to its decision. Some of them have been settled on the spot; others are on the way toward a satisfactory settlement. Among these questions are the following:[1]

1. Establishment of the standard minimum requirements for the issue of the airworthiness certificate with which all aircraft engaging in international navigation must be provided.
2. Determination of the methods of employing wireless apparatus (Art. 14) in aircraft.
3. Publication of maps for air navigation, which are to be prepared in a uniform manner for all countries.
4. Unification of the log books and documents on board aircraft, so as to simplify the formalities to be complied with in the course of journeys by air.

[1] *Convention of 13th October 1919: Its Preparation; Its Entry into Force; Its Application* (May, 1929), p. 11-12.

5. Rules as to lights and signals and the preparation of a code for air traffic.
6. Unification of the models of the certificate of airworthiness, certificate of competency and license, so as to permit the ready identification of their holders whatever be the language in which the documents have been issued.
7. Unification of the symbols and terms used in aeronautical technology, which will facilitate international discussions and the translation of studies, researches or tests, made or undertaken.
8. Medical examinations required for pilots of aircraft.
9. Transmission of meteorological information.
10. Organization of emergency medical boxes on board aircraft.
11. Night landing lights on aerodromes.
12. Adoption, for calculations, of an international standard atmosphere.
13. Rules for air traffic.
14. Transport prohibited for aircraft.
15. Institution of a certificate for navigators and a certificate for meteorologists.
16. Composition of the operating crew of aircraft.
17. Collection and dissemination of meteorological information.
18. Unification of the characteristics required in respect of materials used in aeronautical construction.
19. Competency of women for piloting aircraft.
20. Investigation of aircraft accidents occurring abroad.
21. Use by aircraft of a radiotelegraphic alert signal.
22. Compilation, centralization and publication of air traffic statistics.

Before closing our discussion of the work of the International Commission a few words should be said anent the secretary-general. Institutions are built by men. This is true of international organizations as well as domestic. In the international field, personal tact, untiring enthusiasm and technical ability are peculiarly in demand. The first session of the commission in July, 1922, appointed as secretary-general, Albert Roper who had rendered able service in the drafting of the convention at the Peace Conference. By his vigilance, energetic communication with Governments the world

over, and administrative ability, he has contributed to the continuous progress of the commission.

Amendment of the Convention of 1919

Amending clauses are, in one respect, the most important part of multilateral conventions as well as of national constitutions. For it is all too true that unless international agreements, like constitutions, expand to meet changing conditions of world politics they drop into public contempt and fail to fulfill their destiny. Perhaps, in this matter, diplomats have a few lessons to learn from constitution-builders—from the words of such a statesman as George Washington who in his Farewell Address in 1796 advised his countrymen not only to respect their fundamental law but also to hasten to amend it when it failed to accomplish the purposes of government.

International agreements are notoriously difficult to revise, with the result that their efficacy is sometimes greatly impaired. The authors of the Covenant of the League of Nations had this difficulty in mind when they provided a workable amending process for the Covenant, involving both the Assembly and the Council, whereby amendments shall take effect when ratified by all the Member states whose representatives compose the Council and by a majority of the Member states represented in the Assembly (Art. 26). The independence of statehood is protected by the provision that no amendment shall bind any Member state which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

As we have already noted, the air convention of 1919 solves the difficulty by relegating most of the details of aerial regulation to the annexes, which, with the exception of Annex H, can be modified simply by a resolution of C. I. N. A. As originally provided, this modification was to be accomplished by a vote of three-fourths of the total possible votes which could be cast if all the states were represented (Art. 34, par. 8). Under the amendment to Art. 34, adopted at London

in 1923, the majority must contain at least three of the great states—the British Empire, the United States, France, Italy and Japan. This provision, however, will be abolished if the protocol of June 15, 1929, is ratified. In this event, modification of the annexes hereafter will be effected by resolution of the commission if approved by three-fourths of the total votes of the states represented at the session and two-thirds of the total possible votes that could be cast if all the states were represented.[1] The proviso was originally adopted in order to guard the ambitious air system of the great states against any vexatious regulations that the small states might seek to impose. But apprehensions of such attempts no longer exist.

As to amending the articles of the convention, proposals may originate with one of the contracting states or with the commission. In either case they are to be offered to the states for adoption provided that they are approved by a two-thirds vote in the commission. But all such amendments of the articles become effective only upon ratification by all of the contracting states (Art. 34, par. 9).

This amending process is modern and scientific. Few international organizations to-day are as adequately equipped with the means for the progressive expansion of their constitutional basis. Progress in the development of aviation is so rapid that international regulation would be hampered if modifications in the governing rules could not be secured with promptness.

It is significant that most of the amendments to the articles have been of a nature to purge the convention of all traces of the war mentality of 1919. As we have already seen, the second session of C. I. N. A. at London in October, 1922, proposed an amendment to the fifth article—the article which attempted to force all the allies and neutrals in the late war with Germany into the air régime by putting the contracting states under obligation to close their air space to non-

[1] *Bulletin Officiel,* November, 1929, No. 16, p. 51; *infra,* p. 87 and Appendix I.

contracting states. By the year 1922, none of the immediate neighbors of Germany, save Belgium, had ratified the convention, and it was apparent that some of them at least would never ratify under such conditions. The convention had also created an unfavorable impression in the United States where the failure of the Senate to act upon it placed the American air routes into Canada in an anomalous position.

The fifth article, as modified at the London session, read as follows:

> Art. 5. No contracting state shall, except by a special and temporary authorization, permit the flight above its territory of an aircraft which does not possess the nationality of a contracting state unless it has concluded a special convention with the state in which the aircraft is registered. The stipulations of such special convention must not infringe the rights of the contracting parties to the present convention and must conform to the rules laid down by the said convention and its annexes. Such special convention shall be communicated to the International Commission for Air Navigation which shall bring it to the knowledge of the other contracting states.

This amendment was embodied in a protocol dated at London, October 27, 1922. In three years' time, it received the assent of the 20 states then members of the commission, and entered into force in December, 1926.[1] At the fourth session in London in June, 1923, another important amendment was adopted, which, as we have already described, swept away the inequality in the representation of the contracting states on the commission and allowed each state only one vote.

In 1929, ten years after the drafting of the air convention, the commission undertook an extensive revision. Since this modification was chiefly for the purpose of bringing Germany into the régime, we will postpone an examination of the undertaking until the following chapter.

[1] *Bulletin Officiel*, No. 2, November, 1922, p. 27; No. 8, May, 1925, p. 19, 87; No. 12, May, 1927, p. 17. Compare *Convention* (May, 1929) p. 2.

VI. THE DISARMAMENT OF GERMANY

THE air convention of 1919 was a product of the Peace Conference, and as we have seen reflects the psychology of that conference. It is true that the provisions for the complete disarmament of Germany and its allies by air were included in the various peace treaties, while the general arrangement for an international regulation of the air was relegated to a separate convention. Nevertheless, the air convention of 1919 and the treaty of Versailles are mutually supplementary. The clauses of both treaties were drafted at the same conference and the treaty of Versailles affected commercial as well as military aviation in Germany.[1]

The Question of Suppressing Commercial Aviation in Germany

The Supreme Council entertained no doubts as to the principle of the full disarmament of Germany. But the application of the principle raised questions. It was granted that equipment for war must be abolished. But what was equipment for war? Military planes were in an obvious category. On the other hand, commercial planes, as Secretary Lansing pointed out, presented the same difficulties as horses which could be used to draw guns or to draw plows—a fact that did not constitute sufficient grounds to prohibit them to the Germans.[2]

On April 26, 1919, the Supreme Council met in Monsieur Pichon's room at the Quai d'Orsay to discuss the clauses of the peace treaty relating to aviation which the Aeronautical Commission had drafted. The provision that drew debate

[1] Part V of the treaty of Versailles was drafted by the Naval, Military and Air Committee of the Conseil Supérieur de Guerre de Versailles; while Part XI was drafted by the Aeronautical Commission, which also drew up the air convention of 1919.

[2] Miller, *My Diary with Documents*, XV, p. 344. Compare Ray Stannard Baker, *Woodrow Wilson and World Settlement* (New York, 1923), I, p. 410-414, 455-456.

read: "As regards internal commercial air traffic, the aircraft of the Allied and Associated States shall enjoy through Germany, treatment accorded to aircraft of the most favored nation." In the words of the minutes of the meeting, the discussion proceeded as follows:[1]

Mr. Lansing said that his chief objection to the proposed articles was that there was no reciprocity about them. Germany was given no rights and it appeared as though the allied Governments were trying to suppress all economic aerial activity on her part. He thought this was an unfair attitude to assume, and he did not see why Germany was not given the right to pass through the air of other countries when the allies reserved for themselves full powers to use the air routes of Germany.

Capt. Roper explained that the Aeronautical Commission in drafting these regulations had not intended to suppress Germany's commercial activities. Indeed that was not a question which the commission could have dealt with, as it constituted a political matter which fell outside its functions. The commission had originally intended to put a stop to all German aerial activity, but the Supreme Council had disapproved of any such arrangement. The object the commission had kept in view in drafting the articles under consideration had not been to interfere with Germany's freedom of the air, but to prevent her from interfering with the free passage of allied and associated aircraft over German territory.

This explanation did not satisfy Secretary Lansing who insisted:

The crux of the whole matter lay in the fact that Germany would not be entitled to participate in the air convention until she became a member of the League of Nations, and her entry into the latter would depend upon the assent of her economic rivals, who would necessarily be opposed to her obtaining any aerial commercial privileges.

Secretary Lansing finally withdrew his objections after the adoption of the following formula:

The obligations imposed by these clauses shall continue until January 1, 1923, provided that unless prior to that enemy

[1] Miller, *My Diary with Documents*, XVI, p. 119-121.

countries admitted to the League of Nations or by consent of the Allied and Associated States are permitted to adhere to the convention relating to International Air Navigation made by the latter states.

In other words, by the year 1923, Germany might be able to recover sovereignty of her air space. This was the origin of Art. 42 in the air convention of 1919, and is evidence of the intimate relation between the two treaties.

Air Clauses in the Treaty of Versailles

The move to bar all aerial activity in Germany thus did not meet ultimate success. Commercial progress was hampered for a period by the surrender of all military planes (Art. 202), whereas in interallied countries many military planes soon entered into commercial use. A temporary handicap was imposed by the prohibition of all manufacture and importation of aircraft for six months following the coming into force of the treaty of Versailles. Finally the provision of Art. 198 that "the armed forces of Germany must not include any military or naval air forces" withdrew from the aeronautical industry that support so freely accorded by the military department of other states, at least during such period as Germany was unable to overcome the prohibitions of the treaty. The Aeronautical Interallied Commission of Control was to keep vigilant watch to enforce in Germany all these prohibitions (Art. 210). The same restrictions were placed upon Austria, Hungary and Bulgaria.[1]

In Arts. 313-320 dealing specifically with commercial aviation, the treaty granted the aircraft of the Allied and Associated Powers full liberty of passage and landing in the territories of Germany with the same privileges as German aircraft.[2] All public airdromes were to be open to the aircraft of the Allied and Associated Powers on the same terms as to

[1] The military air clauses in the treaty of Versailles are found in Arts, 198-202, 210; in the treaty of St. Germain, 144-148, 155; treaty of Trianon, 128-132, 139; and treaty of Neuilly, 89-93, 100.

[2] The commercial air clauses in the other peace treaties are as follows: treaty of St. Germain, Arts. 276-283; treaty of Trianon, 260-267; treaty of Neuilly, 204-211.

the Germans. Certificates of nationality, airworthiness and competency issued by the Allied and Associated Powers must be recognized as valid in Germany. The aircraft of the Allied and Associated Powers were to participate in the international commercial air traffic on the most-favored-nation terms. Finally, Germany was to enforce in its territories the rules of the air to be laid down by the victors in the air convention of 1919. These obligations were to remain in force until January 1, 1923, unless before that time Germany were admitted to the League of Nations or permitted by the Allied and Associated Powers to adhere to the air convention.

The Nine Rules

The enforcement of these provisions was far from child's play. Disarmament of Germany by land and sea and air proved a stubborn problem. One result of these difficulties was the prolongation of the prohibition of manufacture and importation of aircraft (Art. 201) which was to run for six months after the treaty of Versailles entered into effect. As a matter of fact, by decision of the Conference of Ambassadors, this absolute prohibition was continued until late in the year 1922, while an indirect prohibition was extended for a further period.

On April 14, 1922, the Conference of Ambassadors at Paris notified Germany that the prohibition of Art. 201 would continue for six months after May 5, 1922, and that thereafter German manufacture and importation of aircraft would be subject to nine rules.[1] These rules had been drawn up by the French undersecretary for aeronautics and adopted by the Interallied Military Conference at Versailles. In order to bar any possible manufacture or importation of military aircraft, the Nine Rules laid down so many restrictions that there was little of aeronautic value left for the

[1] *Revue Juridique Internationale de la Locomotion Aérienne*, 1922, p. 419; Arnold J. Toynbee, *Survey of International Relations*, 1920-1923, p. 111.

Germans. Naturally this was a severe blow to the aeronautic industry which had been paralyzed by the results of the war.

One advantage accrued to Germany on January 1, 1923. On this date, by virtue of Art. 320 of the treaty, the Reich was entitled to recover to a certain extent sovereignty of the air over its unoccupied territory. Accordingly, the German ambassador at Paris informed the Conference of Ambassadors that Germany would adhere in principle to the air convention, making reservations as to Arts. 5 and 34 similar to the Copenhagen declaration.[1] Germany thus made a move to conform to the new international air régime. Conciliation, however, came to an end with the Franco-Belgian invasion of the Ruhr.

National resentment against the seizure of the richest industrial area of Germany gave rise to various retaliatory acts, among which was the Reich decree of April 23, 1923, requiring special German authorization for all foreign commercial aircraft which flew over German territory. Exception was made in favor of Switzerland, the Netherlands, Denmark and the Free City of Danzig with which countries Germany had negotiated aviation treaties. Orders were issued to arrest all pilots and confiscate all aircraft that lacked the proper authorization.

A curious contest then ensued. The Compagnie Franco-Roumaine, which for the past two years had flown its airplanes across Germany on the route to Prague and Warsaw, now attempted to fly its machines over Germany without authorization. For several weeks no accident forced a French pilot to land on German territory. But in May, a pilot was compelled to descend near Nuremberg. He was promptly arrested and the airplane confiscated. The French Govern-

[1] For the German law regulating aerial circulation in Germany of April 23, 1923, and the Copenhagen agreement of April 15, 1922, see *Revue Juridique Internationale de la Locomotion Aérienne*, 1923, p. 509 and 511.

ment made diplomatic protest at Berlin, but to no avail.[1] Throughout the next two years Germany seized French aircraft landing within its borders, confiscating in all 14 airplanes, and eventually compelling the French company to change its route to run by way of Zürich and Innsbrück.

The Accord of May, 1926

These conditions continued until the Locarno treaties (initialed on October 16, 1925) ushered in a new day of Franco-German relations. The conciliatory diplomacy of Stresemann and Briand, among its many achievements, resolved the anarchy in the air régime. The Conference of Ambassadors instructed the Interallied Committee of Guaranties, which had replaced the Aeronautical Interallied Commission of Control, to devise a new supervisory system for Germany, while negotiations with the French, British, Belgian, Italian and Japanese Governments resulted in the satisfactory arrangements of May 7 and 22.[2] The Committee of Guaranties disappeared, and, in accordance with Art. 213 of the treaty of Versailles, the supervision of military control was left to the League of Nations. The Nine Rules, of course, were abrogated, and German aeronautic industry was henceforth free except for the prohibition against military aircraft.

The relaxation of the severe restrictions upon Germany was followed by the signing of air treaties with France and Belgium (May 22 and 29) providing for reciprocal privileges of flight over their respective territories. Commercial exploitation immediately began. On May 26, the Paris-Ber-

[1] For an account of this episode and the protest of the French Government, see London *Times*, May 21, 1923, p. 7; and June 4, 1923, p. 11. Compare Werner Bartz, *Deutsche Luftrechtspolitik seit Versailles* (Berlin, 1927), p. 20-21. On November 20, 1924, Pierre-Etienne Flandin, in a remarkable speech before the French Chamber of Deputies, declared that the German Government believed itself to be acting within its rights and implied that the French Government had been lax in not ending the present anarchy by negotiation, even to the extent of agreeing to a modification of the Nine Rules. He furthermore suggested that if negotiation should fail the problem might well be referred to C.I.N.A. (*Journal Officiel, Débats Parlementaires*, November 21, 1924, p. 3685).

[2] Compare London *Times*, May 1, 1926, p. 13; May 8, 1926, p. 3; May 22, 1926, p. 11.

lin lines were inaugurated, being operated by the Lignes Farman and by the Deutsche Luft Hansa; while the Compagnie Internationale de Navigation Aérienne, which had detoured its Strassburg-Prague line through Switzerland, began to operate the more direct route crossing Germany.[1] The German Luft Hansa also secured the privilege of a route across France for its Berlin-Geneva-Barcelona service.

The interallied restrictions upon German aviation had stimulated a sort of psychological resistance. Stories were told by travelers and investigators indicating the existence of forbidden military airplanes and of a system of surreptitious pilot training for military purposes. But, regardless of any sporadic military effort by ultrapatriotic groups of citizens, the open development of aviation had been prodigious. By 1926, German companies operated more planes, flew more miles, and carried more passengers and freight than any two other countries in Europe.

Revision of the Air Convention of 1919

The time had come when the absence of Germany from the diplomatic table of C. I. N. A. was proving an embarrassment. Would it consent to membership? The story of Germany and the League of Nations found a parallel. In 1919, the war mentality of the Peace Conference had refused German admission to the League. Germany protested. By 1926, however, there was fear that it might play the Soviet game and refuse to join the League. Thus, eventually its agreement to participate in the responsibilities of Geneva was met with acclaim. So also in the air régime. In 1919, Germany was definitely excluded from C. I. N. A., at least for a period of time. In 1926, aviation experts were wondering how to induce the Germans to enter the fold.

Important political changes often have informal beginnings. In 1925, Secretary-General Roper while in Stockholm met Dr. Alfred Wegerdt, soon to become counselor in the

[1] Compare notes in *L'Aéronautique*, July, 1926, p. 249, 252.

Reich Ministry of Communications. He secured the latter's promise to study the question of revising the convention of 1919 in such a manner as to meet all German objections. The result was the publication of a monograph under Dr. Wegerdt's name with suggestions for amendment of the convention.[1] This article, taking semi-official cognizance of the convention, awoke prompt response, and an extraordinary session of C. I. N. A. was summoned to meet in June, 1929, in Paris to undertake a complete revision of the convention. Invitations to participate were sent not only to the contracting states but also to all states interested in aviation. Besides 22 contracting states, 16 noncontracting states participated. The latter included the former enemy states, Germany, Austria and Hungary; the United States; Spain and four other signatories of the Ibero-American convention, namely Brazil, Colombia, Cuba and Venezuela; together with Switzerland, Norway, Estonia, Finland, Luxemburg, China and Haiti.

The deliberations frankly proceeded on the basis of examining the objections of the Wegerdt monograph, and ended in several important changes in the convention highly acceptable to the German delegates, among whom was Dr. Wegerdt himself. One of these innovations was the recognition of an even greater concession to the doctrine of state sovereignty over the air. German opinion, possibly growing out of the bitter experiences of the postwar period, had condemned the failure of the convention to recognize the right of a contracting state under exceptional circumstances temporarily to restrict or prohibit air traffic above its territory, wholly or in part, and with immediate effect.

Such an amendment appealed strongly to imperial states like the British, whose colonial borders as in India contain

[1] The English of the title is "Germany and the Paris Convention relating to the Regulation of Air Navigation," *Zeitschrift für das gesamte Luftrecht*, October, 1928, II, No. 1, p. 25-49. The article was republished in French under the title "L'Allemagne et la Convention de Navigation Aérienne de Paris de 13 Octobre 1919 (C.I.N.A.)," in *Le Droit Aérien*, XIII, p. 169.

unruly tribes against whom strict measures are frequently taken. In such cases it is deemed good policy to interdict all flight above the affected territory in order to keep out provoking agents from abroad.[1] The amendment to Art. 3 as finally adopted provided for this situation, and even allowed a state to close an area temporarily to all foreign aircraft while permitting the flight of its own citizens in that area.[2]

The obnoxious features of Art. 5 were completely eliminated. The Spanish delegate had proposed the deletion of the entire article as a bar to regional negotiations such as the Ibero-American agreement.[3] This suggestion was not accepted, but the amended article was given a soothing vagueness that seemed to admit the possibility of special treaties including rules inconsistent with those of the convention itself.

In like manner, Art. 7 was amended to give the contracting states wider latitude in the registration of aircraft. It simply stated that registration shall be effected in accordance with the laws of the registering state. Similarly, in regard to the amendment of Art. 15, a new provision was inserted stipulating that every contracting state may make conditional on its prior authorization the establishment of international airways and the creation and operation of regular international air navigation lines with or without landing on its territory.

The discussion leading up to this amendment found a radical reversal of positions held in the past. Twenty-nine states, including France, Germany and Italy, stood against freedom of the air for international lines and for the requirement of authorization previously obtained. Four states, including

[1] Compare the statements by Sir W. Sefton Brancker and Col. F. C. Shelmerdine, *Extraordinary Session of June 1929, Draft Minutes*, p. 22-24.

[2] The proposed amendments are found in *Extraordinary Session of June 1929, Draft Minutes*, annex n; and in *Bulletin Officiel*, November, 1929, No. 16, p. 49-53.

[3] *Extraordinary Session of June 1929, Draft Minutes*, p. 32.

Great Britain and the United States, voted for liberty of international lines.[1]

Finally, all vestige of the inequality of states represented in the commission was eliminated by an amendment to Art. 34 whereby the assent of three of the great states is no longer required for the modification of the annexes. Hereafter, amendment of the annexes would be effected by a three-fourths vote of the states represented at the session provided this be two-thirds of the total possible vote of all the contracting states.

In general, it may be said that while the proposed amendments of 1929 maintain the restrictive attitude toward freedom of aerial traffic, they succeed in eradicating the vestiges of the war psychology of 1919. The extraordinary session adjourned with confidence that the contracting states would accept the amendments and thus pave the way for the admission of Germany and its former allies and perhaps even of Spain and some of the Latin American states.

[1] *Extraordinary Session of June 1929, Draft Minutes*, p. 54-56.

VII. THE AMERICAN SYSTEM OF INTERNATIONAL AVIATION

THE New World which Canning claimed to have called into being offers a difficult problem of international organization. Shall international relations be organized on a world basis? If not, are regional leagues and unions to flourish in place of a constitutional society of all nations? The question invites the consideration of the feasibility of a world-wide organization in contrast to separate concentrations of regulation such as an American system, a European system, and possibly Asiatic and African systems.

For years, European jurists have watched, often with regret, the growth of what is claimed to be an American system of public law quite distinct from what is considered universal international law, and they have been somewhat alarmed at the beginning of the codification of such law under the ægis of the Pan American Union. At the same time it has been a matter of regret that, while a President of the United States played the leading rôle in the establishment of the League of Nations, he was unable to guide his own country into this general society of states.

So far as the United States is concerned, a policy, typified by the Monroe doctrine, has tended to bar American collaboration with European nations while actively opposing the development of European relations with the Americas. It is thus eminently characteristic of American history that the League of Nations and other organizations growing out of the Great War have been looked upon by many Americans as European institutions outside the scope of a true American policy. The refusal of the American Senate to advise and consent to ratification of the Covenant of the League was followed by failure to consider the air convention of 1919. In spite of its President, the United States was in process of rapid recession from the close European relation of the Great War.

The Pan American Convention of Commercial Aviation

Ever since 1889 when the first Pan American Conference was held, the states of the New World have slowly strengthened the bonds between themselves by occasional conferences and by a loose organization maintained at Washington under the name of the Pan American Union. At the Fifth Pan American Conference held in Santiago de Chile in 1923, an Inter-American Commercial Aviation Commission was appointed to draft a "bill of laws and regulations, the adoption of which is to be recommended to all the American states, with respect to commercial aviation, the determination of aerial routes, the establishment of special customs procedure for aviation, and the determination of adequate landing policies, and it shall make recommendations with respect to the places at which said stations shall be established." [1]

The Commercial Aviation Commission met four years later in May, 1927, at the Pan American Union in Washington, and prepared a draft which was revised by the Director-General of the Union and submitted to the Sixth Pan American Conference which met in January, 1928, at Habana. With modifications this project was adopted by the conference and signed by every one of the 21 states of the Pan American Union.[2]

Such was the origin of a system of aerial regulation which has been hailed in some quarters as a rival of the Paris régime. Ratifications have come slowly. Within two years the convention has been ratified by only four of the signatory states, namely, Guatemala, Mexico, Nicaragua and Panama. [3]

The Ibero-American Convention

The Pan American convention was not the only rival of C. I. N. A. Another competitor was already in the field,

[1] *Actas de las Sesiones Plenarias de la Quinta Conferencia Internacional Americana* (Santiago de Chile, 1925), II, p. 367-368.

[2] *Sixth International Conference of American States, Final Act, Motions, Agreements and Conventions* (Habana, 1928), p. 97-109.

[3] *Bulletin of the Pan American Union*, March, 1930, p. 237.

namely the Ibero-American convention, the result of a diplomatic maneuver by Spain.

The Madrid Government, like the other ex-neutral Governments, had been invited to adhere to the air convention of 1919. But it declined, partly because of the fact that it did not have an equal voice on the commission along with France and Italy. In 1926—in the second year of the dictatorship of Primo de Rivera—Spain withdrew from the League of Nations; its claim for a permanent seat on the Council had not been admitted. National prestige suggested a policy of counterbalances; and the creation of a Latin American air régime offered itself as a profitable experiment in diplomacy, especially since only two American states (Chile and Uruguay) were members of C. I. N. A.

On invitation of the Spanish Government the Ibero-American Aviation Congress met in Madrid on October 25-30, 1926. All the states of Latin America except Haiti were represented, as well as Spain and Portugal.[1] The conference ended with the signing of the Ibero-American air convention. Ratifications slowly followed: Spain and Paraguay in 1927; Mexico and the Dominican Republic in 1928; and Costa Rica in 1929.

The Ibero-American convention was avowedly modeled on the convention of 1919. The text of the earlier convention and its annexes is followed word for word save in a few clauses.[2] Art. 5 differs from the first treaty in giving the contracting states the most extensive liberty to authorize or prohibit the flight of the aircraft of noncontracting states over their territory. Art. 7 contains a slight improvement upon the system of registration of aircraft. All inequalities of states are eliminated in Art. 34, each state having one vote

[1] The states represented were Argentina, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Chile, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Portugal, Salvador, Spain, Uruguay and Venezuela.

[2] The Spanish text of the Ibero-American convention is found in the *Gaceta de Madrid*, April 23, 1927. For an English translation, see *Extraordinary Session of June 1929, Draft Minutes*, annex c.

in the Ibero-American Commission for Air Navigation with its seat at Madrid.

The Ibero-American convention omits all reference to the Permanent Court of International Justice at The Hague. That tribunal was thought to be too close to the League of Nations, from which Spain had just withdrawn. According to Art. 37, disputes among the contracting states are to be referred to arbitrators. Arts. 41 and 42 make no mention of the Great War, and the former article specifically invites all states whether Ibero-American or not, to adhere to the convention. Finally, in view of the fact that Chile, Portugal and Uruguay were members of C. I. N. A., Art. 43 provides that the signature of the convention does not imply the cancellation of other air agreements previously concluded by any of the states. The annexes of the convention of 1919 are reproduced save for the omission of Annexes F, G and H. Otherwise, clause by clause, the Ibero-American convention follows the air convention of 1919. This imitation is sincere flattery for the excellence of the technical phases of the earlier treaty. If the political clauses of the convention of 1919 had been as liberal in the beginning, its membership would probably have been doubled.

Comparison of C. I. N. A. and the Pan American Convention

The Pan American convention is no mere copy of its European precursor. The negotiators, it is true, had the advantage offered by the study of the former treaty. Indeed, the Inter-American Commercial Aviation Commission had been specifically instructed to study all existing air agreements.[1] The 37 articles contain much that is similar to the convention of 1919; there are some comparative defects, some improvements, and several provisions of purely American character.

[1] See *Actas de las Sesiones Plenarias de la Quinta Conferencia Internacional Americana*, II, p. 368.

The convention of 1928 has no annexes; all rules are contained in the treaty itself including customs regulations—a subject relegated to an annex of a special nature in the convention of 1919. The Pan American convention also applies exclusively to private aircraft, and has no chapter on aircraft owned by the states themselves. As to sovereignty, the convention of 1928 asserts the complete jurisdiction of the subjacent state as positively as does the earlier treaty. It also puts an obligation upon the contracting states to grant innocent passage over their territories in time of peace to the private aircraft of the other contracting states. Prohibited zones are allowed; but the equality of treatment between domestic and foreign aircraft applies only to foreign aircraft engaged on international routes (Art. V). Furthermore, each contracting state may prescribe the route to be followed over its territory by the aircraft of other states which must be observed except in cases of *force majeure.*

On the subject of registration and certificates of competency the two conventions are not in harmony. While the convention of 1919 lays down obligatory rules of registration, the Pan American convention provides that registration shall be made in accordance with the laws of each contracting state (Art. VIII). It thus obviates the necessity for interfering with the internal legislation of the various states, providing simply that aircraft can be registered in but one state. On the other hand, this lack of regulation leads to an inconsistency in regard to the certificates of competency; for, if national laws are not uniform, how can competency be attested? The difficulty is solved by a curious arrangement, whereby certificates of competency are to set forth that each pilot, in addition to having fulfilled the requirements of the state issuing the certificate, has passed a satisfactory examination as to the traffic rules in the other countries in which he desires to fly (Art. XIII). In other words, each registration office must be familiar with the rules of perhaps 20 jurisdictions.

In the matter of supervision of landing in a foreign country, the Pan American convention is perhaps more emphatic in declaring that "the aircraft, aircraft commander, crew, passengers and cargo shall be subject to such immigration, emigration, customs, police, quarantine or sanitary inspection as the duly authorized representatives of the subjacent state may make in accordance with its laws" (Art. XVIII).

The question of damages to persons or property, which in the European system is left to a special convention, is placed entirely by the Pan American convention within the competence of each contracting state (Art. XXVIII). Finally, in case of disagreement between two contracting states, the Pan American convention ignores the Permanent Court of International Justice and provides a clumsy system of arbitrators (Art. XXXVI).

From a technical standpoint, the convention of 1919 as amended in 1922, 1923 and 1929 seems to offer a superior basis of international regulation. General rules which do not require frequent modification are placed in the convention itself, while detailed rules requiring constant change in order to keep pace with mechanical advancement are segregated in the more flexible annexes. The Pan American convention lacks this simple device to facilitate progressive development, relegating an unduly large part of aerial control to national legislation with the resulting confusion of practice.

The attempt to avoid the use of international machinery also is a prominent feature of the Pan American convention. The Pan American Union, located in Washington, has been given but few of the duties intrusted to C. I. N. A. It plays no part in the progressive amendment of the convention; that function is left presumably to the Pan American conferences which meet every five years. The Union does not even serve as a means of transmitting information, save in a general way. Hence, the cumbersome arrangement requiring every contracting state each month to file with every other contracting state a copy of all registrations and can-

cellations of registrations of aircraft engaged in international navigation, and requiring the states to communicate to each state in turn their various regulations concerning prohibited areas, authorized airways, certificates, airdromes and landings. In view of the great distances in the New World, however, such arrangements may be necessary in spite of the fact that the airplane has done much to abridge time and distance.

Regional Regulation Versus World Regulation

The appearance of the two American air régimes has caused anxiety to the school of jurists and international administrators who look forward to the universal synthesis of international relations. Even the German experts who lead the movement to bring the Reich into C. I. N. A. express the fear that the existence of three groups of states tends to block progress toward the establishment of a general public aerial law.[1]

There is another side of the picture. Regional systems are not devoid of international utility and may even contribute to universal integration. But the latter hypothesis seems to require that states cooperate in a superregional organization as well as in their local systems. In any event, the present situation offers numerous problems of conflict of laws. As Señor Espil pointed out in the Sixth Pan American conference, some of the Latin American states have signed all three of the international air conventions, which as we have already seen are far from uniform. These states are thus confronted with the task of avoiding the embarrassment of a multiplicity of codes while cooperating loyally in the regimen of international progress.

If it is possible to draw conclusions from the facts at our disposal it seems that, with the development of transoceanic flights aided by airdromes stretched across the Atlantic, the American states will require air agreements with nearly every

[1] Compare Dr. Wegerdt in *Zeitschrift für das Gesamte Luftrecht*, II, p. 41.

European country. If these agreements are bilateral, the confusion of practice will be intensified. If, on the other hand, the European states meet the situation by adhering to the Pan American convention, as they are entitled to do under Art. 35, the awkward question is raised as to European representation in the Pan American conferences when the convention on commercial aviation is under discussion. The alternative policy seems to be that of a general adhesion of American states to C. I. N. A., particularly in view of the failure of the United States to ratify the convention of 1928. At all events, international aerial regulation in the Old World has gone far beyond such control in the New World, with the result that confusion exists in the progress toward universal unification of air law.

VIII. THE CODIFICATION OF PRIVATE AIR LAW

THE drafters of the convention of 1919 envisaged an organization whose functions lay chiefly in the realm of public international law. Nevertheless, there is nothing in the text of the convention to prevent C. I. N. A. from acting as a universal legislature for private as well as public law. In some respects, the two fields are so closely related that a desirable unification of law would apparently be promoted through the coordination offered by a common center of regulation. But, at present, the development of private aerial law is in the hands of a special international system composed of occasional international conferences and a permanent Comité International Technique d'Experts Juridiques Aériens.

The First International Conference of Private Air Law

The need for uniform laws governing international commercial transactions and the international relations of nationals is generally admitted. This field, known as private international law, is still largely filled by national legislation. Even today, maritime law is to be found in the domestic rules of nations rather than in a universal code. The unification of aerial law, however, gives promise of a more rapid and scientific development. This progress began even before the Great War, when in 1910 a group of jurists organized the Comité Juridique International de l'Aviation and undertook a collective study of the problem of building up a code of private air law as well as a code of public air law.[1]

With the sudden expansion of aviation after the Great War the question assumed more than academic interest. Commercial aviation, like all other means of transportation, immediately produced a long series of legal problems such

[1] See p. 44-45, 115.

as insurance and the liability of the shipper. For instance, a firm in Berlin consigns a case of surgical instruments to a London physician by way of an air traffic company. En route over Holland the consignment is damaged through the negligence of the pilot. Who, then, stands the loss, the Berlin firm, the London physician, the shipping company or the insurance company?

The liability of the shipper is only one of the several subjects covered in the national statutes that appeared in rapid succession with the growth of commercial aviation. Switzerland proclaimed such a law on January 27, 1920; Great Britain on December 13, 1920; Germany on August 1, 1922; Italy on August 20, 1923; and France on May 31, 1924.[1] This national legislation proved to be widely divergent and thus inconvenient to merchants, to shippers and to the traveling public. Lack of uniformity of commercial codes is ever one of the great obstacles to international trade and intercourse.

On November 30, 1923, the Air Transport Committee of the International Chamber of Commerce adopted a resolution urging the promotion of an international conference with power to draft projects of private international aerial law to be submitted for ratification to all countries. Two years later, the Third Congress of the International Chamber of Commerce, held at Brussels in June, 1925, voted:[2]

> The congress of the International Chamber of Commerce, considering that in various countries interested in commercial aviation new questions of civil law are constantly arising, involving serious danger of conflicting judgments in the civil courts, decides to take all necessary measures with a view to recommending the convocation of an international official conference, charged with drafting an international convention on civil air

[1] Switzerland, *Recueil Officiel des Lois et Ordonnances de la Confédération Suisse* (1920), new ser., XXXVI, p. 177-186; Great Britain, *Public General* Acts (1920), 10 & 11 George V, Ch. 80, p. 540-549; Germany, *Reichsgesetzblatt* (1922), pt. I, p. 681-687; Italy, *Raccolta Ufficiale delle Leggi e dei Decreti del Regno d'Italia* (1923), p. 6361-6376; France, *Journal Officiel, Lois et Décrets*, June 3, 1924, p. 5046-5050.

[2] *Resolutions Passed at Third Congress, Brussels, June, 1925* (Paris, 1925), p. 50-51.

law similar to the international convention on public air law signed on October 13, 1919.

In the meanwhile the French Government had taken steps to meet the new demands of commerce. In August, 1923, Premier Poincaré informed the chancelleries of the world of his intention to call an international conference to meet in November for the purpose of drafting a convention regarding the liability of shippers in international traffic, and in general to decide whether the time was opportune to pursue the study of the codification of the private international law of the air.[1]

The proposal was somewhat vague and the replies were not encouraging. Some Governments asked to have a project actually submitted to them before a conference was convoked. Moreover, at that moment, French prestige had reached low ebb, for the Franco-Belgian invasion of the Ruhr had not proved an edifying spectacle. In June, 1925, however, the invitation was repeated, accompanied by a draft project of a convention regarding the responsibility of the shipper in aerial traffic.[2]

This project served as the basis of discussion at the International Conference of Private Air Law which was held at Paris October 27-November 6, 1925. The conference was attended by representatives of 43 states.[3] Under the presidency of the forward-looking French statesman, Pierre-Etienne Flandin, the negotiators accomplished two results. In the first place, they modified the French draft convention and then offered it to their Governments for further

[1] For the text of the French note of August 17, 1923, see Ministère des Affaires Etrangères, *Conférence Internationale de Droit Privé Aérien, 27 Octobre-6 Novembre 1925* (Paris, Imprimerie Nationale, 1926), p. 9.

[2] *Conférence Internationale de Droit Privé Aérien*, 1925, p. 10-14.

[3] The states represented were as follows: Albania, Argentina, Austria, Belgium, Brazil, British Empire, Chile, China, Colombia, Czechoslovakia, Denmark, Dominican Republic, Egypt, Estonia, Finland, France, Germany, Greece, Guatemala, Hungary, Italy, Japan, Latvia, Lithuania, Luxemburg, Mexico, Monaco, the Netherlands, Paraguay, Peru, Poland, Portugal, Rumania, Siam, Spain, Sweden, Switzerland, Turkey, Union of Socialist Soviet Republics, United States, Uruguay, Venezuela and Yugoslavia. The United States and Hungary were represented only by official observers.

study prior to convoking a second conference for final adoption. In the second place, they established the Comité International Technique d'Experts Juridiques Aériens, with its seat at Paris, charged with the duty of continuing the work of the conference and studying in particular the possible codification of nine specified subjects of aerial law.

Comité International Technique d'Experts Juridiques Aériens

The International Technical Committee of Juridical Aerial Experts, in spite of its awkward name, has proved a highly useful instrument.[1] Indeed, C. I. T. E. J. A. follows what Professor Jesse S. Reeves has aptly called the "new technic of codification." This method involves careful drafting of projects of conventions by experts from many lands, the study and criticism of these drafts in the chancelleries of the various Governments, then an exchange of views between the Governments, followed by another meeting of experts for compromise and modification of the text—all this taking place before the international conference is convoked to discuss and formally adopt the convention in question.

C. I. T. E. J. A. held its first meeting in the French Ministry of Foreign Affairs, May 17-21, 1926. Legal experts from 23 of the 40 states that signed the protocol of the conference of 1925 were present. The distinguished jurist, Professor de Lapradelle, presided, while Edmond Sudre was appointed secretary. The experts then laid down three guiding principles as follows:[2]

1. The maintenance of the tenet of the progressive elaboration of a single international code of private air law.

2. Preparation of texts on legal subjects for submission to the examination of periodic international conferences.

[1] The Comité is generally referred to as C. I. T. E. J. A., which is pronounced as one word, Citeja, with no accent.

[2] *Comité International Technique d'Experts Juridiques Aériens; Compte-Rendu de la Ière Session, Mai 1926*, p. 23.

3. Establishment of a program each part of which should be studied by commissions of experts.

To carry out this program, four commissions, of 11 members each, were formed; they were instructed to study the following questions:

First Commission: (1) nationality of aircraft; (2) aeronautical registration; (3) ownership and co-ownership, construction and transfer; and (4) rights, mortgages, privileges and seizures.

Second Commission: (1) commercial transportation and tourism; (2) invoices; (3) liability of shipper to senders of merchandise and passengers; (4) jettison of cargo; and (5) renting of aircraft.

Third Commission: (1) damages and liability to third parties in taking-off, landing and jettison; (2) limits of liability; and (3) insurance.

Fourth Commission: (1) juridical status of the commander and the personnel; (2) accidents to the personnel and insurance; (3) status of the passengers; and (4) law applicable to acts committed on board an aircraft.

The second session of C. I. T. E. J. A. was held in Paris, April 4-7, 1927, with 27 states represented; the third session in Madrid, May 24-29, 1928, with 19 states represented; the fourth session in Paris, May 6-8, 1929, with 24 states represented. The four commissions have met separately twice a year. It should be added here that at the second session in Paris, a permanent secretariat was formed and M. Sudre was appointed permanent secretary-general. The secretariat has its offices in the French Ministry of Air, 37 Avenue Rapp.[1] The expenses are borne equally by the adhering states; the amount being the small sum of 5,000 francs for each state.

It was the Second Commission of C. I. T. E. J. A. that was specially charged in 1926 with the redrafting of the project for a convention on liability of carriers in international air traffic. Modifications proposed by the British, German, Swiss, Lithuanian and Czechoslovak Governments were duly studied. The revised project was finally reported to the

[1] For information regarding the secretariat see the brochure entitled *Liste des Experts Délégués par les Etats Adhérents au C. I. T. E. J. A., Programme des Travaux et Composition des Commissions: Règlement Intérieur* (Paris, 1930).

committee and adopted at the Madrid session; whereupon it was transmitted by the French Government to the other states.[1]

All was now ready for the Second International Conference of Private Air Law; and, at the invitation of the Polish Government this met in Warsaw, October 4-12, 1929. Thirty-one states were represented. The majority of the delegates and technical advisers were men of considerable experience in aerial law—men who had seen service together on various organizations and conferences including the First Conference of 1925, and the sessions of C. I. N. A. and C. I. T. E. J. A. After some important compromises, the project of a convention on liability of shippers in international air traffic was adopted under the title of convention for unification of certain regulations relative to international air transportation and was signed by 14 of the states.[2] The conference also passed resolutions approving the policy of holding conferences to codify private international air law; and it requested C. I. T. E. J. A. to continue its work of preparing draft proposals.

It is worthy of note that Germany, although refraining from membership in C. I. N. A., has regularly participated on equal terms with all other states in every session of C. I. T. E. J. A. as well as in the conferences of 1925 and 1929. The Soviet Union and Turkey have also assisted in every conference and every session of the committee except the first session. The United States, on the other hand, has only been represented in the conferences by "observers." In the first session of C. I. T. E. J. A. it was represented by a delegate. It had no representation at the second session, but thereafter it has been represented simply by "observers." The United

[1] Compare *Compte-Rendu de la 3e, Session, Mai 1928*, p. 119-128.

[2] The signatory states were Germany, Austria, Belgium, Denmark, France, Greece, Italy, Japan, Yugoslavia, Luxemburg, Great Britain, Poland, Switzerland, and Czechoslovakia. The Foreign Ministry of Poland expects to publish the procès-verbaux of the Warsaw Conference in similar form to that of the conference of 1925 as published by the French Government. The text of the convention of 1929 has been published in a brochure by C. I. T. E. J. A.

States has not yet become a member of C. I. T. E. J. A. However, after long and careful consideration the President on April 1, 1930, sent to Congress a message in which he asked for an appropriation of $250 "to meet the share of the United States of the expenses" of the committee for the year 1930. The resolution to give this request effect was passed by the House of Representatives on May 29, and was pending in the Senate after June 2.[1]

By failure to adhere to C. I. T. E. J. A., the United States foregoes the privilege of a voice in the legislative process which is rapidly developing a code of private air law—a code that promises to become universal. American technical delegates, headed in the last few years by John J. Ide of the National Advisory Committee for Aeronautics, represent the

[1] See 71st Cong., 2d sess., Sen. Doc. No. 121, H. J. Res. 299, H. Rept. 1345 and *Congressional Record*, April 30-June 2, 1930.

The Treaty Division of the Department of State, responsive to an inquiry, narrates the history of the proposal referred to as follows in a letter dated July 14, 1930:

"The Department believes that you have reference to a draft of a joint resolution authorizing an annual appropriation of a sum not to exceed $250 to pay the quota of the United States toward the expenses of the International Technical Committee of Aerial Legal Experts, for which, in a report to the President dated May 3, 1928, the Department recommended that the favorable consideration of Congress be requested. On May 4, 1928, President Coolidge commended to the favorable consideration of Congress the recommendation of the Department of State as contained in its report of May 3, 1928. H. J. Res. 311, authorizing an annual appropriation to meet the quota of the United States toward the expenses of the International Technical Committee of Aerial Legal Experts, passed the House of Representatives on May 28, 1928. As Congress adjourned on May 29, 1928, no action on the joint resolution was taken by the Senate during the first session of the 70th Congress. Nor was any action taken by the Senate on this resolution during the second session of that Congress.

"In a report to the President dated March 26, 1930, this department referred to President Coolidge's message to Congress of May 4, 1928, concerning the International Technical Committee of Aerial Legal Experts and again recommended that Congress be requested to enact legislation authorizing an annual appropriation of a sum not in excess of $250 to meet this Government's share of the expenses of the International Technical Committee of Aerial Legal Experts, beginning with the year 1930. The department's report of March 26, 1930, was transmitted by President Hoover to Congress on April 1, 1930, with a recommendation for favorable consideration. H.J. Res. 299, authorizing an annual appropriation of a sum not in excess of $250 for the purpose stated, was passed by the House of Representatives on May 29, 1930, but was not passed by the Senate prior to the adjournment of the second session of the 71st Congress on July 3, 1930.

"The message of May 4, 1928, from President Coolidge to Congress transmitting this department's report of May 3, 1928, is printed in S. Doc. 94, 70th Cong., 1st Sess. President Hoover's message of April 1, 1930, transmitting to Congress the report of March 26, 1930, is printed in S. Doc. 121, 71st Cong., 2d Sess., with which is also printed a copy of S. Doc. 94 of the 70th Cong., 1st Sess."

United States in the conferences and in the sessions of C. I. T. E. J. A., but because of the attitude of their Government they do not take part in the debates and can not make American participation really effective.

The Relation of C. I. N. A. and C. I. T. E. J. A.

Can the existence of two official bodies like C. I. N. A. and C. I. T. E. J. A. be justified? Does the present condition make for the much desired unification of air law?

It appears that when the French Government decided in 1923 to initiate the great task of codifying aerial law it considered the advisability of asking C. I. N. A. to undertake these studies.[1] There was, however, one grave objection. At that time C. I. N. A. represented only 21 states. The promoters of the new undertaking hoped to enlist the interest of every state in the family of nations. Under these circumstances the French Governnment deemed it expedient to organize the project on a wider basis by calling a new international conference.

The action caused no conflict between the French Government and C. I. N. A. In the words of Secretary-General Roper: "The French Government stated its intentions to C. I. N. A. and offered to associate the commission in the work contemplated by requesting the latter to authorize its secretary-general to take charge of the Secretariat of the conference. C. I. N. A., on its part, proclaimed its competency in the matter, but appreciating the reasons of expediency which explained the attitude of the French Government, formulated no protestation, willingly authorized the cooperation offered, and considered that the subsequent enlargement of the air convention of 1919 would before long

[1] See statement of Secretary-General Roper in International Commission for Air Navigation, *Extraordinary Session of June, 1929*, annex a, p. 8.

do away with the temporary duplication of a question the two parts of which are manifestly connected." [1]

The expectation of C. I. N. A. that an enlargement of the convention of 1919 would bring the problem of codification of private air law within its functions remains to be fulfilled. In the meanwhile a permanent secretariat of C. I. T. E. J. A. has been established and a special technic developed in which the legal experts of 32 countries now participate.[2] In justification for the continuance of this arrangement it is claimed that the field of codification of private air law is so vast that it should be separated from public air law. Moreover, because of conflicting rules in domestic legislation some of the questions for adjustment are so intricate that an extraordinary method of draftmanship is required.

It is also said that in view of the fact that C. I. N. A. has administrative powers and adopts modifications of its rules which are put into force by the member Governments, it would be a delicate matter for the commission to treat internal questions such as liability of the shipper and insurance which Governments are accustomed to regulate themselves.

At any rate, so long as Spain and the South American states as well as the United States abstain from C. I. N. A., the existence of C. I. T. E. J. A. can be easily defended. At

[1] The resolution referred to was voted in the session of October, 1923, and read as follows: "The commission, after having taken cognizance of the French Government's communication concerning the international conference on questions of aerial law, authorizes its General Secretary to undertake, if necessary, the secretariat of such conference. It directs its General Secretary, however, to remind the French Government that par. (*g*) of Art. 34 of the air convention refers expressly to the competence of the I. C. A. N. 'in regard to all questions which the states may submit for examination'. It considers that the question of the responsibility of aerial carriers is closely allied in practice to questions concerning the regulation of aerial navigation, the study of which devolves on the I. C. A. N. by virtue of the international convention of October 13, 1919, and that it is fully qualified, by means of its Legal Subcommission, usefully to study this matter. It therefore expresses the wish that, with a view to maintaining a unity of views in the organization of air navigation and of air traffic, par. (*g*) of Art. 34 be interpreted in its broadest sense by the contracting states." (*Official Bulletin*, December, 1923, No. 5, p. 29).

[2] The participating states in 1930 are: Argentina, Austria, Belgium, Brazil, China, Czechoslovakia, Denmark, Dominican Republic, Egypt, France, Germany, Great Britain, Greece, Guatemala, Hungary, Italy, Japan, Lithuania, Luxemburg, Mexico, the Netherlands, Peru, Poland, Portugal, Rumania, Spain, Sweden, Switzerland, Turkey, Union of Socialist Soviet Republics, Yugoslavia, and the United States as an observer.

the present time, in the well-chosen words of Professor Henry-Coüannier, the two organizations find their duties to be "parallel, but not concurrent, and by no means hostile." [1]

[1] *Éléments Créateurs de Droit Aérien* (Paris, 1929), p. 73.

IX. THE LEAGUE OF NATIONS AND THE AIR RÉGIME

FEW international questions fail to touch in some respect the League of Nations. That the League does not play a larger rôle is due to a remarkable restraint practiced by the League statesmen in the first decade of its existence. Whenever the functions of the League have been exercised in a field hitherto devoid of international organization it has acted vigorously, but whenever its functions have coincided with those of other international agencies, it has held its activities in abeyance or else sought to secure a cooperating arrangement. This policy is admirably illustrated by the relation of the League to the régime of air control.

International regulation of the air comes within the purview of the League in the following ways: (1) the League's constitutional relationship with C. I. N. A., (2) the question of communications and transit, and (3) the problem of disarmament. The first two of these categories will be described in this chapter, the third will be postponed to Chapter XII.

The League and C. I. N. A.

The originators of the League believed that international cooperation could be rendered more simple and have more efficacy by centralizing as much as possible the various regulatory organs. Art. 24 of the Covenant provided: "There shall be placed under the direction of the League all international bureaus already established by general treaties if the parties to such treaties consent. All such international bureaus and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League."

C. I. N. A. took legal existence in 1922 and thus falls into the second group of the 24th article. But the commission

has always chafed under its relationship to the League and has stood as much aloof as possible. This attitude was due not entirely to the jealousy inherent in all governmental organs, but rather to the belief that more states would adhere to the convention of 1919 if the commission were separate from the League.

As in all such cases, the direction of the League has been light. There has been no attempt on the part of the sagacious Secretary-General, Sir James Eric Drummond, to force an unwilling submission. Since four permanent members of the Council of the League—France, Great Britain, Italy and Japan—are also members of C. I. N. A., any dispute over respective jurisdictions is not likely to be carried far.

In 1926, when the question of coordination was urged upon C. I. N. A., an understanding was reached whereby the secretary-general of the commission would send to the League an agenda of each session of the commission and would invite the secretary of the League's Committee on Communications and Transit to attend *ad audiendum*.[1] At the same time, the Secretary-General of the commission would be invited to attend the sessions of the Committee on Communications and Transit.

Conferences on Communications and Transit

That the League would take vigorous initiative in international cooperation to promote freedom of transportation was clearly the intent of the framers of the Covenant. Art. 23 of the Covenant provides: "Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League . . . (*c*) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League." In accordance with this obligation the Council arranged for a program of action

[1] See resolution No. 277 at the session of C. I. N. A. in May, 1926. *Official Bulletin*, June, 1926, No. 10, p. 10.

to be submitted to the Assembly, with the result that the latter body adopted resolutions calling for the appointment of a permanent advisory committee and for occasional general conferences on communications and transit.[1] Three of these international conferences have been held, one at Barcelona in 1921, and two at Geneva in 1923 and 1927.

At the Barcelona Conference, there was organized the Advisory and Technical Committee for Communications and Transit (why must international jurisdiction be encumbered with such long names?) to prepare the agenda of future conferences and to advise the Council and the Assembly on transportation problems.[2]

Annual sessions of the committee are held each year at Geneva. Naturally, questions of aerial navigation as well as shipping and railways have come within the range of its study. The Third General Conference in 1927 recommended the following topics to the consideration of the committee:[3]

Agreement between states concerning rules and regulations for civil air navigation. Articles of treaties of commerce concerning air navigation.

Bills published, acts and regulations regarding the régime and legal position of air navigation or likely to affect its development.

Information on regular lines already open, between two points in the territory or with starting point, terminus or intermediate stopping point in the territory.

Regular lines to be opened. Information concerning timetables. Important work approved, in process of execution or completed during the year concerning the establishment of air routes, (landing grounds, day and night signals, etc.), maps.

Statistics concerning air traffic.

[1] *Records of the First Assembly, Plenary Meetings* (Geneva, 1920), p. 47-58.

[2] *Conférence de Barcelone, Comptes Rendus et Textes relatifs au Réglement d'Organisation des Conférences Générales et de la Commission Consultative et Technique des Communications et du Transit*, p. 58-60. The committee is made up of governmental appointees and is served by a section in the Secretariat of the League. Monsieur R. Haas has served as chief of the section, and consequently as general secretary of the various committees on communications and transit, since its organization in 1921.

[3] *Third General Conference, Records and Texts*, II, p. 48. (C.558(a).M.200(a), 1927.VIII.15/II).

The attention of the Committee for Communications and Transit has lately been drawn to the subject of combined air and rail transport. Its Subcommittee on Combined Transport made a report during its 12th session at Geneva in 1928 recommending this sort of transport cooperation.[1]

Duplication of International Agencies

One of the contributions made by the Committee for Communications and Transit has been an investigation of duplication in the supervision and study of aerial navigation. It will be generally admitted that redundancy in these fields is to be avoided. The chief organizations now existing include:

1. C. I. N. A.
2. C. I. T. E. J. A.
3. International Conferences on Private Air Law.
4. League of Nations: Committee for Communications and Transit.
5. Preparatory Commission for the Disarmament Conference.
6. Pan American Conferences.
7. International Chamber of Commerce.
8. International Air Traffic Association.
9. Comité Juridique International de l'Aviation.
10. International Law Association.
11. Institut de Droit International.
12. Fédération Aéronautique Internationale.

The first six organizations in this group are public, the last six private.

At the Third Conference in 1927, Robert Herold of Switzerland called attention to the "considerable dispersion of effort" that now obtains in the field of aviation and proposed that the committee study the present lack of concentration and organization.[2] As a result, the committee has undertaken such a study.

[1] Advisory and Technical Committee for Communications and Transit, *Minutes of the 12th Session, Geneva, February 27-March 2, 1928, p. 15-16.*

[2] *Third General Conference, Records and Texts,* I, p. 45-46. (C.558.M.200.1927. VIII.15/I).

In this connection it should be noted that at the meeting of the International Air Traffic Association in August, 1929, the duplication of international agencies was not only condemned but also complaint was made that some of these agencies, particularly C. I. N. A. and C. I. T. E. J. A., do not give representation to the Air Traffic Association in their deliberations, and a resolution was adopted urging that pressure be exerted on the participating Governments to change this condition.[1] The International Chamber of Commerce also has pointed to the fact that some of the international agencies of transport and communication, both public and private, do not lend themselves to cooperation, but the culprits in this respect are not cited by name.[2]

If duplication exists it is not due to any over-zealous action on the part of the League. While the intention of the authors of the Covenant was to draw all international regulation into the orbit of Geneva, practical considerations have prevented immediate pursuit of this object. Such an end would be sufficiently difficult to attain even if the League were universal and included the United States and Soviet Union. Thus, while C. I. N. A. aspires to a world-wide air régime and avoids the ægis of the League on this account, the League lacks the prestige of a universal membership and can not effectively assert its constitutional claims, at least in the realm of public air law. In regard to private air law, it appears that the statesmen of the League states have missed one opportunity to concentrate the direction of universal legislation, for C. I. T. E. J. A., the chief agency in this field, has been created in recent years by them apparently without taking account of the existing possibilities of coordination.

[1] International Air Traffic Association, *Information Bulletin* (The Hague, 1929), No. 12, p. 71-75.

[2] See the report of the Coordination Committee of the Transport and Communications Group presented by Sir John Sanderman Allen, *World Trade*, July, 1929, p. 421-422.

X. THE UNIVERSAL POSTAL UNION AND OTHER PUBLIC AGENCIES

ONE of the most important services of air-lines is the rapid transportation of the mails. In this field, aviation comes in contact with the international machinery already organized in the form of the Universal Postal Union of which every postal administration in the world is a member and which maintains a bureau in Bern for clearing accounts.

Air Mail

The postal convention, creating and regulating the Union, is revised every five years. At the congress of the Union at Stockholm in August, 1924, clauses regarding air post were included for the first time in the revised convention. Art. 74 of the Stockholm convention provided as follows: (1) Transit rates for air mail were not to be the same as for ordinary mail; (2) rates for conveyance were to be uniform in all countries which used the service without sharing the working expenses; (3) the countries served directly by air-lines were to fix rates for service performed with the air companies concerned; furthermore each postal administration maintaining an air service retained the right to collect conveyance rates from other administrations which made use of it; (4) provision was also made for the transfer of mails carried by more than one air service and for warehousing before further transmission.[1]

The Stockholm convention had been in existence only a year when the Committee on Air Transport of the International Chamber of Commerce acted upon the widely recognized need of modification. At its meeting of October 27-28, 1926, the committee adopted a resolution calling attention to

[1] *Documents du Congrès Postal de Stockholm, 1924* (Lausanne, Imprimeries Réunies, 1924), II, p. 864; League of Nations, *Treaty Series*, XL, p. 73.

the fact that the universal postal conventions are binding on the signatory Governments for five years, during which it is practically impossible to amend them, that the next Universal Postal Congress was not to be held until 1929 in London; accordingly, the committee called the attention of the postal administrations to the feasibility of summoning a limited official conference under the provisions of Art. 3 of the Stockholm convention. The resolution proposed that the conference should inquire into the possibility of establishing as a practical experiment a limited common agreement between the postal administrations of countries crossed by the heaviest and longest postal currents and suggested that such agreements should be placed in force from January 1, 1928, so that proposed amendments to the Stockholm convention, which would need to be submitted to the coming London congress, might be based upon actual experience and presented in due time.[1]

Detailed suggestions as to the content of the agreements were communicated to the postal administrations of the Universal Postal Union. The committee soon had the satisfaction of learning that its recommendation with regard to a special conference of postal administrations was generally favored; and in March, 1927, the Post Office of the Union of Socialist Soviet Republics took the step of formally proposing the convocation of this special conference.

The Conference of Postal Administrations met at The Hague in September, 1927. The principal questions before it were: (1) unification of surtaxes to be charged the public, and (2) the simplification of remuneration to the carrier.[2] A convention drawn up by this body was put into force in Austria, Belgium, the Belgian Kongo, Bulgaria, Denmark, Free City of Danzig, Estonia, Finland, France, Germany,

[1] International Chamber of Commerce, Air Transport Committee, *Proposals concerning the Air Post Laid before the Special Conference of the Universal Postal Union, Meeting of May 18th, 1927,* (Manuscript report No. 2651), p. 1.

[2] Compare Pierre Comoz, "La Poste Aérienne: La Conférence Spéciale de la Haye" in *Etude Aéronautiques,* September, 1927, p. 26-48.

Great Britain, Hungary, Latvia, Morocco, the Netherlands, Persia, Poland, Sweden, Switzerland, Czechoslovakia and the U. S. S. R.[1]

At the quinquennial Congress of the Universal Postal Union, which met in London in May, 1929, the 37 articles of the Hague agreement were annexed, in slightly modified form, but as an integral part of the London convention.[2]

The most significant change in the London convention as a whole is the provision in regard to its duration.[3] This is to be, as usual, five years, but by common agreement of the signatories it may be modified during that period. According to the final protocol, a proposal for reconsideration must have the assent of three countries through the International Bureau at Bern, and the calling of a conference requires the approval of a majority of the signatories.

In general it may be said that the regulation of air mail is still in an experimental stage. The aim of the International Chamber of Commerce in suggesting new rules, as well as the postal congresses in making new rules, has been to preserve flexibility and easy modification of regulations in order to meet changing conditions in the new industry.

The story of the collaboration between the International Chamber of Commerce and the Universal Postal Union is a conspicuous example of effective cooperation between a private and a public international agency, an instance of the usefulness of an internationally organized group of citizens for promoting universal regulation deemed to be beneficial and of good judgment on the part of a public agency in taking advice from such a source.

[1] *Documents de la Conférence sur la Poste Aérienne de la Haye, Septembre 1927* (Berne, Bureau International de l'Union Postale Universelle, 1927), p. 231-251.

[2] *Documents du Congrès Postal de Londres, 1929* (Berne, Imprimerie Par Stæmpfli & Cie., 1929), II, p. 773-794. Previous to the meeting of the London congress, the Chamber of Commerce laid before the Postal Union another report containing further proposals. See *Report Presented to the Universal Postal Union* (Paris, 1928), brochure No. 67.

[3] Compare Pierre Comoz, "London Postal Convention, May 18-June, 1929", *Etudes Aéronautiques*, December, 1929, p. 13.

The International Air Congresses

Another feature of the international air régime is to be found in the International Air Congresses summoned from time to time by various Governments. The first five of these congresses, held between the years 1889 and 1911 at Paris, Milan, Nancy and Turin we have already described.[1] Although they have been convoked under the auspices of particular Governments and are to be considered as public, nevertheless, they are not in the same category as conferences where the delegates come with powers to negotiate. Their purpose is to raise discussion and permit an exchange of views that may be beneficial to scientists, manufacturers and air traffic companies as well as to the participating Governments. While the agenda is devoted chiefly to mechanical problems, attention is also given to air law.

The first of these congresses after the war, was called by France on the initiative of Pierre-Etienne Flandin, and was held in Paris, November 15-25, 1921. The second congress met in London in June, 1923, at the invitation of the British Government. Official delegates to the number of 551 attended from 22 countries.[2] Standardization and technical development were the chief topics of discussion, although M. Sudre read a report urging the calling of an international conference to draft a code of private air law—a report which resulted in the adoption of a resolution urging this matter on the attention of Governments.

[1] See above, p. 40-41.

[2] The following countries were represented: Afghanistan, Belgium, Brazil, British Empire, Chile, China, Czechoslovakia, Denmark, France, Netherlands, Italy, Japan, Mexico, Norway, Poland, Rumania, Soviet Union, Spain, Sweden, Switzerland and the United States. See *Report of the International Air Congress at London, 1923* (Royal Aeronautical Society, 1923), p. 7-15.

XI. PRIVATE INTERNATIONAL ORGANIZATIONS

NO study of international control of aviation would be complete without a review of the numerous private organizations and conferences in the field. Some of these bodies are interested in air law as an abstract legal problem. Other organizations represent commercial interests and seek to promote reforms in governmental regulation that will facilitate international trade. Still other associations are primarily interested in aviation as a sport and maintain a code of rules and regulations governing aeronautic contests.

International Law Societies

As we have related in another chapter, both the Institut de Droit International and the International Law Association several decades before the Great War began the study of air law. The former accepted Fauchille's doctrine of freedom of the air while the latter at its conference of 1913 adopted the English theory of complete state sovereignty with the right of innocent passage.[1]

The Great War interrupted the work of both of these societies. At its first meeting after the war, held at Portsmouth in 1920, the International Law Association resumed its study of air law. On this occasion, papers were presented approving the air convention of 1919 as the basis for a universal aerial régime and urging the amendment of the convention in order to eliminate the clauses inspired by the war as well as to open the way for the adherence of all states.[2] At the next meeting in 1921, the association adopted a resolution recommending that all the signatory states hasten to ratify the convention.[3] At most of the sessions since 1920,

[1] See p. 42-44.

[2] International Law Association, *Report of the Twenty-Ninth Conference, Portsmouth, 1920*, p. 377-432.

[3] *Report of the Thirtieth Conference, The Hague, 1921*, p. 330-332.

the reports of the Aerial Law Committee of the association have occupied a prominent part on the program. In particular, the association has been interested in codifying the law of aerial warfare; a code on this subject was adopted at the Stockholm conference in 1924 and was addressed to the attention of C. I. N. A.[1]

The sessions of the Institut de Droit International have also included studies in the field of air law. At the Lausanne session of the Institut in 1927 Professor Fernand de Visscher, reporter of the 11th commission, proposed a resolution sustaining in a modified form the principle of the Madrid session of 1911 to the effect that "international aerial circulation is free." After strenuous debate in which attention was called to the actual *status quo* as expressed in the air convention of 1919, the resolution was amended to admit the complete sovereignty of the subjacent states.[2]

While the resolutions of these associations are the mere expression of wishes on the part of private societies, nevertheless it should be remembered that they are the opinions of a very influential group of citizens of many states and carry unusual weight with Governments.

Comité Juridique International de L'Aviation

The origin and early work of the Comité Juridique International de l'Aviation, we have already described in another chapter. After the Great War, the Comité resumed its careful task of building up its project of a code of air law. Its first congress after the War, was held at Monaco in 1921.[3]

[1] *Report of the Thirty-First Congress, Buenos Aires, 1922*, p. 213-214; *Report of the Thirty-Third Conference, Stockholm, 1924*, p. 118-120; *Transactions, 1873-1924* (London, 1925), p. 27-28.

[2] *Annuaire*, 1927, I, p. 341-397; III, p. 226-257, 337-339. The amendment to the original resolution proposed by Professor Charles Dupuis directly proclaiming the sovereignty of the subjacent states was rejected by a vote of 30 to 13. The amendment offered by Baron Rolin-Jacquemyns which suppressed the declaration of freedom of circulation and indirectly admitted sovereignty was accepted by a vote of 33 to 13. *Ibid.*, III, p. 231, 235-236.

[3] The proceedings are found in *Compte Rendu du Quatrième Congrès International de Législation Aérienne, Monaco, 19-22 Decembre 1921* (Paris, 1922).

Other congresses have been held at Prague in 1922, at Rome in 1924, at Lyons in 1925 and at Madrid in 1928.

Step by step the Comité has continued the process of constructing its code, with the support of members in 37 countries.[1] To-day the code consists of 87 articles, 21 of them being only a statement of principle. The code is intended as a guide for both national and international legislation, and concerns both public and private law. The arrangement is as follows:

Book I. Public Air Law.
Book II. Private Air Law.
  Title I. Civil Law.
  Title II. Commercial Law.
Book III. Administrative Air Law.
Book IV. Fiscal Air Law.
Book V. Penal Air Law.
  Title I. Crimes and Offenses against the Safety of the States.
  Title II. Crimes and Offenses against Persons.

It is difficult to estimate the exact influence of this rather remarkable private body of jurists. The French Government has highly valued its collaboration.[2] Likewise the Comité International Technique d'Experts Juridiques Aériens seeks its services. Indeed, many of the experts appointed by Governments to serve on C. I. T. E. J. A. are members of this private organization not only in France but also in their respective countries. The Comité was invited to collaborate with C. I. T. E. J. A. in the drafting of the convention on liability of shippers in international traffic and many members consulted with the official organization for this purpose in the Madrid session of May, 1928.

[1] The text of the code and a list of the members of the Comité are given in the *Liste-Annuaire des Membres au 1er Janvier 1929*. The seat of the Comité is 95, rue des Petits-Champs in Paris. Messrs. Millerand and Laurent-Eynac are the two honorary presidents; Monsieur Delayen is president of the administrative commission; Professor de Lapradelle is director and Professor Henry-Coüannier is reporter-general.

[2] Compare a statement by M. Sudre at the Prague congress, *Compte Rendu du Cinquième Congrès International de Législation Aérienne, Prague, 25-30 Septembre 1922* (Paris, 1922), p. 226.

The Comité has rendered an outstanding service to the science of air law by supporting the publication of a periodical the *Revue Juridique Internationale de la Locomotion Aérienne,* the name of which has recently been changed to *Droit Aérien.* Some other excellent journals have been published in the field of air law—in Italy, *Il Diritto Aeronautico,* in Germany, *Die Zeitschrift für das Gesamte Luftrecht,* and in the United States, the *Journal of Air Law.* But the *Revue* was the pioneer. From the beginning in 1910, it has been edited by Professor Henry-Coüannier. It is devoted not only to technical articles and to the proceedings of the Comité, but also to a comprehensive documentation on air law.[1]

International Chamber of Commerce

The International Chamber of Commerce, founded in 1921 and now representing national chambers of commerce in 27 countries, has been well described as "a private organization for public welfare; its purpose being to develop international trade, to suppress the barriers which hamper commercial exchanges, to strengthen the bonds which link the various nations together, to counteract the causes of economic conflict and thereby contribute to the maintenance of peace."[2] The resolutions of its biennial congresses have contributed to such notable achievements as the appointment of the Dawes committee and the calling of the Geneva Economic Conference of 1927. From its inception the International Chamber has been particularly interested in problems of international communication. Naturally it wishes to keep open the highways of commerce and to facilitate all means of international transport, by air, as well as by land and sea. At its second inter-

[1] The *Revue Juridique Internationale de la Locomotion Aérienne* suspended publication during the Great War, and resumed in 1922. In 1929 the name was changed to *Droit Aérien.* This quarterly is published by Per Orbem, 4, rue Tronchet, Paris. The subscription rate is 50 francs per annum in France and 75 francs in foreign countries.

In 1930, the *Zeitschrift für das Gesamte Luftrecht* suspended publication.

[2] *The International Chamber of Commerce: What It is and What It Does* (Paris, 1929), p. 1. Its seat is at 38 Cours Albert Premier, Paris. The Chamber's quarterly publication entitled *World Trade* is published in three languages, English, French and German.

national congress at Rome in March, 1923, the Chamber set up a Committee on Air Transport.[1] Its chairman is Pierre-Etienne Flandin, former French undersecretary of air in the ministries of Millerand and Leygues and later minister of commerce in the ministries of Tardieu.

The Committee on Air Transport is composed of 31 members nationals of the following 15 countries: Belgium, Czechoslovakia, Denmark, France, Germany, Great Britain, Italy, Japan, Jugoslavia, the Netherlands, Norway, Poland, Rumania, Sweden and the United States.[2] The procedure of the committee is to study traffic problems and draw up recommendations, which in turn are communicated to the proper governmental officials. For instance, as soon as the International Chamber of Commerce approves recommendations as to private air law, they are communicated to the Governments represented in the International Conference of Private Air Law and C. I. T. E. J. A.

The Committee on Air Transport has played a worthy part in the propaganda for unification of air law. At the Brussels congress in 1925 and at the Stockholm congress in 1927 the resolutions of the International Chamber of Commerce urging states to adhere to the air convention of 1919 have had, according to Monsieur Flandin, practical results in bringing new members into C. I. N. A.[3] In the field of the unification of private air law, as we have already described, the Chamber has taken a prominent part in advocating the adoption of a convention on shippers' liability which culminated in the work of the Warsaw conference of 1929.[4] At present the Committee on Air Transport is studying the intricate problem of air insurance.

The international air-mail service has been promoted through the efforts of the Chamber. In a special session of

[1] International Chamber of Commerce, *Resolutions adopted at the Second Congress, Rome, March, 1923* (Paris, 1923), p. 91.

[2] *World Trade*, July, 1929, p. 437-438.

[3] International Chamber of Commerce, *Proceedings of the Congress, Amsterdam, July, 1929*, p. 90.

[4] See above p. 100.

the Air Transport Committee it called the attention of the postal administrations, through the Universal Postal Union to needed changes in the Stockholm convention in 1924, in order to facilitate correspondence by air mail. As a result the Conference of Postal Administrations was held at The Hague in September, 1927. A number of the committee's propositions were accepted and an agreement on air post was reached. This arrangement served until the next meeting of the Universal Postal Congress in London in 1929, which finally adopted the proposals of the International Chamber of Commerce.[1]

The Committee on Transport by Air has also approached the significant questions of combined railroad and air transport; the creation of free airports; the minimizing of obstacles to air navigation by the creation of a special customs régime and the simplification of passport and visa regulations; an international entente for the exploitation of long distance air-lines; and finally, certain measures for the limitation of international aeronautical expositions. Reforms in these matters were urged in resolutions adopted at the Amsterdam congress in 1929.[2]

There would be difficulty in estimating precisely the influence of the International Chamber of Commerce in the realm of air regulation, for its connections in the leading commercial countries are extensive, but there is no exaggeration in saying that its efficacy has been commensurate with its activities in this field.

International Air Traffic Association

The tendency to organize international commercial interests, of which conspicuous examples have been seen in maritime and transcontinental shipping, has given rise to a loose international union of air-lines. The International Air Traffic Association had its origin in August, 1919, when on the

[1] See above p. 110-112.

[2] *World Trade*, July, 1929, p. 437-442; October, 1929, supplement No. 1, p. 43-45; supplement No. 2, p. 90-95.

invitation of the president of the Air Travel and Transport Company, representatives of several British, German, Dutch, Danish, Norwegian and Swedish companies met at The Hague in conference. Out of this meeting grew the International Air Traffic Association.

This association quickly proved its utility. There was need for a system of connecting services on the various air routes, for a system of regulating accounts and for concerted action in such matters as air mail and shippers' liability. A permanent organization became necessary. Hence, in 1920, a Central Office was set up at The Hague and statutes were formally adopted a year later.[1] In the process of organization the question had been broached as to whether the new association should be a free union of air companies or a cartel dividing the territory and sharing profits. The former relationship was chosen.

For several years the I. A. T. A. seemed destined to remain an association limited to northern European companies. Rivals soon appeared. French companies formed a free union embracing air-lines in southern Europe; at the same time, a cartel, the Trans-Europa Union, began operations in central Europe. Clever diplomacy, however, secured the adhesion of the French companies to the I. A. T. A., while the cartel dissolved in 1925 and the component corporations joined the association.

Largely because the I. A. T. A. respects the autonomy of its members, it has survived all similar associations and has drawn into its membership 22 companies comprising nearly all the European air-lines outside of the Soviet Union. Its *modus operandi* is principally that of promoting cooperation through an exchange of information. Conferences of delegates from the member companies are frequently held; reports from each of the companies are rendered, and questions of general interest discussed. The agenda is arranged to

[1] The seat of the Central Office is at 3, Anna Paulownaplein, The Hague. The general manager is Jonkheer I. L. van den Berch van Heemstede.

secure the timely adoption of resolutions which will be helpful to C. I. N. A. and C. I. T. E. J. A. and other governmental bodies as indicating the opinion of the air traffic corporations on matters requiring public regulation.[1] The association publishes a monthly international Aerial Time-Table, showing 153 air schedules throughout the world.[2] The following table indicates the member companies and their comparative size:

MEMBERS OF THE INTERNATIONAL AIR TRAFFIC ASSOCIATION [3]

Company	*Traffic in 1928*		
	Flown Kms.	*Passengers*	*Freight in Kgs.*
A. B. Aerotransport (Stockholm)	1,515,545	55,728	277,167
Ad Astra Aero (Zurich)	———	———	———
Aero O. Y. (Helsingfors)	———	———	———
Air Union (Paris)	1,352,153	13,077	560,866
Compagnie Air Union (Paris)	48,078	———	———
Compagnie Internationale de Navigation Aérienne (Paris)	2,141,215	2,378	438,572
Compagnie Générale Aéropostale (Paris)	2,681,229	4,921	165,600
Compagnie Tchecoslovaque de Navigation Aérienne (Prague)	———	———	———
Det Danske Luftfart Selskab (Copenhagen)	148,495	1,602	12,076
Deutsche Luft Hansa A. G. (Berlin)	10,217,528	111,115	2,054,800
Deutsch-Russische Luftverkehrs Gesellschaft (commonly called Deruluft) (Berlin)	780,264	2,490	68,824
Drustvo za Vazdusni Saobracaj (Belgrad)	148,840	1,322	———

[1] Compare International Air Traffic Association, *Information Bulletin* (1929), No. 12, p. 75.

[2] *L'Indicateur Aérien: Unique Horaire Officiel de l'Association Internationale du Trafic Aérien* (Editions G. Roche d'Estrez, 2, rue Blanche, Paris). The price is 3 francs per copy or 30 francs per year in France and 40 francs abroad.

[3] Data as to traffic is taken from International Air Traffic Association, *Information Bulletin* (The Hague, 1929), No. 12, p. 15-57; *Rapport Fait au Nom de la Commission des Finances Chargée d'Examiner le Projet de Loi Portant du Budget Général de l'Excercice 1930, Air* (Paris, 1929), p. 192; Jane's *All the World's Aircraft, 1929.*

Imperial Airways Limited (London)	867,791	27,396	573,000
Koninklijke Luchtvaart Maatschappij voor Nederland en Kolonien, (The Hague)	1,623,000	17,007	674,610
Lignes Farman S. G. T. A. (Paris)	800,000	8,400	354,000
Magyar Legiforgalmi Reszvenytarsasag (Budapest)			
Oesterreichische Luftverkehrs A. G. (Vienna)	643,000	5,477	97,337
S. A. Aero Espresso Italiana (Rome)	295,648	1,111	8,386
Société Anonyme Baloise commonly called Balair (Basel)			
Société Anonyme Belge d'Exploitation de la Navigation Aérienne (Brussels)	643,578	9,854	136,111
S. A. Navigazione Aerea (Genoa)	515,655	4,784	18,146
Transadriatica (Venice)	485,526	3,041	61,662
Ukrwosduchpout (Charkov)			

In general, the I. A. T. A. attempts to do much the same service for air traffic that the International Railway Union performs for rail transportation and the International Maritime Committee for shipping by sea.

Fédération Aéronautique Internationale

Aviation owes much to the adventurous spirits who have looked upon flying as a magnificent adventure worthy of its hazards, and who, by their zeal, have extended the frontiers of our aeronautical experience. The development of aviation as a sport has contributed immensely to the progress of aviation as a science. At the same time, by the means of competitions, aero-meets and international flights, it has promoted the comity of nations.

Aviation as a sport has become internationally organized. Many countries to-day have aero clubs such as the well-known Aéro Club de France, founded in Paris in 1898, or the Royal Aero Club of the United Kingdom.[1] Several countries have

[1] Naturally the Aéro Club de France is a center where every personage in the world of aviation turns up sooner or later. The club house is located at 6 rue Galilée near the Arc de Triomphe. An excellent library on aeronautics is maintained.

numerous clubs of this sort; in France there are 50 such societies affiliated with the Aéro Club de France. These clubs support an international organization known as the Fédération Aéronautique Internationale.[1] Created in Paris in 1905 with the primary purpose of establishing unity in rules of sport, the Federation now includes federations of aero clubs in 27 countries. It has played an important rôle in setting up standards in the marking of aircraft and in the confirmation of air records.

At the same time, the Federation carries on a dignified campaign of propaganda to render Governments favorable to the science of aviation; while the individual aero clubs affiliated with the Federation promote international friendliness by extending their hospitality to foreign members of similar clubs when traveling abroad.

In conclusion it may be said that the development of the governmental regulation of the air would be retarded if the support, encouragement, expert collaboration and even driving force of private organizations were withdrawn. Democratic Governments to-day largely act at the behest of popular demand or the prodding of energetic citizens; and the orderliness of the development of international control of aviation is partly due to the intelligent labors of private organizations.

[1] The seat of the Fédération Aéronautique Internationale is in the Aéro Club de France in Paris. For years, Count de la Vaulx, who died in an airplane crash in 1930, served as president. Monsieur Paul Tissandier is the secretary-general. The Federation publishes a quarterly *Bulletin de la Fédération Aéronautique Internationale.*

XII. MILITARY LIMITATION AND REGULATION

THE Great War was the cause of tremendous development in several outstanding inventions including the submarine, chemical warfare and aircraft. The first of these weapons is intimately connected with sea power, but the last two are essential elements in sea power and land power, as well as air power.

The war necessitated a readjustment in national military forces. The relative value of old arms was questioned. It had raised a doubt as to whether an airplane costing $10,000 might not work greater destruction than a dreadnaught costing $40,000,000. It had also demonstrated the fact that on land a few airplanes can often do more damage to the enemy than several battalions of infantry. Thus air power became a matter of the gravest concern, and soon the governments were engaged in a new race in air armaments.

All this has happened in spite of the fact that under the peace treaties, Germany, Austria, Hungary and Bulgaria surrendered their military aircraft and are prohibited from manufacturing or maintaining fighting planes or dirigibles.

The Race in Air Armaments

There is a growing fear in European countries anent the use of airplanes in time of war. The French newspapers and technical periodicals are full of references to the menace of the great German system of commercial aircraft, while apprehensions are expressed regarding the Fascist policy in the Mediterranean.[1] In Italy the trenchant articles of General Douhet in the *Rivista Aeronautica* proclaim the formula that in the next war "the land is only useful for defense, the

[1] On the technical side of this question, see a symposium on "La Flotte Aérienne dans la Guerre à Venir" in *Revue des Forces Aériennes* (a monthly periodical published in concourse with the Ministry of War, at 55, Quai des Grands-Augustins, Paris), February, 1930, p. 218-226.

place to attack is the air."[1] Fulminations by Mussolini are educating the Italian people to support a large air fleet without grumbling.[2] During the London Naval Conference of 1930 when Italy refused to discuss its claim for naval parity with France the Fascist press declared that Italian air forces were inferior to those of France and demanded that the budget contain sufficient appropriations to insure parity in the air.[3]

England is considered the most vulnerable of all nations to aerial attack because its capital is in easy bombing range from the continent, while the English Channel instead of serving as a protection as is the case in maritime warfare now serves as an assistance to enemy raiders by delaying any warning of their approach.[4] Perhaps nothing more patently shows the lurking fear of air attack than a recent statement made by a Labor member of the British Parliament in reference to Britain 's chief ally in the Great War : [5]

Mr. Malone (Northampton, Labor member) said that the next war would, in the first instance at all events, be an air war. If we were at war with France the first action would be a bombing raid by French aeroplanes in London. Were the Government content to allow France to have a four-to-one ratio in aeroplanes compared with this country? The position was very anomalous. If we were safe in the air with 1,292 fighting aeroplanes compared with 4,730 possessed by France, there was surely no need to stick out for a two-power naval standard at the present Naval Conference.

[1] Compare his articles entitled "La Conquista del Domino dell' Aria" and "Probabili aspetti di guerra futura", *Rivista Aeronautica*, March, 1928, p. 411-439; and April, 1928, p. 1-59.

[2] Compare texts of speeches in *Benito Mussolini: Discorsi del' 1925* (Milan, 1928), p. 35-46; and *Giornale d'Italie* (Rome), March 27, 1929, p. 1.

[3] Compare *La Tribuna* (Rome), March 20, 1930, p. 1; *Corriere Padano* (Ferrara), March 20, 1930, p. 1; *Il Regime Fascisti* (Cremona), March 20, 1930, p. 1; *Giornale d'Italia* (Rome), March 21, 1930, p. 2. The *Corriere Padano* is the organ of General Balbo, the minister of aeronautics.

[4] Compare the London *Observer*, March 2, 1930, p. 8; Major-General E. B. Ashmore, *Air Defense* (London, 1929), Ch. XII.

[5] London *Times*, March 19, 1930, p. 10.

Similar expressions of a haunting dread of aerial raids can be found in the contemporary parliamentary debates of every great state.

Thus it is not surprising that recent increases in military air forces have been notable. Most military régimes have followed the example initiated by Great Britain during the Great War (in April, 1918) when the air personnel was separated from the army and navy and set up as the Royal Air Force.[1] Under Mussolini in 1926 Italy established a separate Regia Aeronautica, and in 1929 France formed an Armée de l'Air which promises to become detached from the army and navy. Recent increases in the services are shown by the following tables:

INCREASE MILITARY AVIATION EXPENDITURES[2]

Year	*Great Britain* (*pounds*)	*United States* (*dollars*)	*France* (*francs*)	*Italy* (*lire*)
1924	14,600,000	24,689,000	405,637,018	460,207,000
1925	15,540,000	30,429,000	400,353,550	529,872,000
1926	15,401,000	32,316,000	379,427,887	679,866,000
1927	15,123,000	41,438,000	695,442,942	625,810,000
1928	16,250,000[3]	57,886,000[3]	791,990,810	614,510,000
1929	16,200,000[3]	63,711,000[3]	924,540,620[4]	700,000,000

INCREASE IN MILITARY AVIATION EXPENDITURES
(Reduced to dollars)

Year	*Great Britain*	*United States*	*France*	*Italy*
1924	70,372,000	24,689,000	16,225,440	24,221,421
1925	74,902,800	30,429,000	16,014,142	27,888,000
1926	74,232,820	32,316,000	15,175,115	35,782,421
1927	74,951,000	41,438,000	27,817,717	32,884,874
1928	78,325,000[3]	57,886,000[3]	31,679,623	32,342,632
1929	78,084,000	63,711,000[3]	36,981,985[4]	36,610,000

[1] For an account of the organization of the Royal Air Force, see James M. Spaight, *The Beginnings of Organised Air Power: A Historical Study* (London, 1927).

[2] Compiled from various sources including the League of Nations, *Armaments Year Book; Annual Report of the U. S. Department of War; Annual Report of the U. S. Department of the Navy; Journal Officiel de la République Française,* and *British Air Estimates.*

[3] Estimated expenditures.

[4] *Armaments Year Book,* 1929-1930, gives Air Ministry estimates at 1,769,700,000 francs ($70,788,000).

The Washington Conference of 1921

There are at present no international agreements for the limitation of military aircraft, save the prohibitions placed upon the central European states by the victors in the Great War. The Washington conference of 1921 which resulted in the five-party treaty limiting capital ships and large aircraft carriers placed no bounds on airplanes and dirigibles. Indeed, the American proposal which Secretary Hughes laid before the conference at the opening session declared: "The limitation of aircraft is not proposed. Owing to the fact that naval aircraft may be readily adapted from special types of commercial aircraft, it is not considered practical to prescribe limits for naval aircraft." [1]

Notwithstanding this negative attitude, a Committee on Aircraft composed of military experts was appointed to consider the problem. It reported against the feasibility of imposing any limitations upon either commercial or military aircraft, except in the single case of lighter-than-air craft.[2] The conference took no action. What had occurred was explained by the American delegates in their report to President Harding as follows: [3]

It was found to be impracticable to adopt rules for the limitations of aircraft in number, size or character, in view of the fact that such rules would be of little or no value unless the production of commercial aircraft were similarly restricted. It was deemed to be inadvisable thus to hamper the development of a facility which could not fail to be important in the progress of civilization.

The conference confined itself to the creation of a commission of jurists to meet at The Hague and drafting an inter-

[1] *Conference on Limitation of Armament*, (Sen. Doc. No. 126, 67th Cong., 2d sess.), p. 63.

[2] Sen. Doc. No. 126, p. 395-408; British Parliamentary Paper, *Conference on Limitation of Armament* (Cmd. 1627 of 1922), p. 32. The members of the committee included: Rear-Admiral William A. Moffett and Major-General Mason M. Patrick for the United States; Air-Vice-Marshal J. F. A. Higgins for the British Empire; Captain Albert Roper for France; Colonel Riccardo Moizo for Italy; and Captain Osami Nagano for Japan.

[3] Sen. Doc. No. 126, p. 818.

national code to govern the use of aircraft in wartime. Thus the conference failed to curb the agent of destruction which had rendered the battleship less formidable than before the war, and had rendered admiralties amenable to the suggestion of scrapping a few of the so-called "dreadnoughts."

The Washington conference made little headway against the new inventions of destruction developed by the Great War; its reduction of armament was chiefly in the field of the older and even obsolete weapons. Lost was the opportunity to abolish the submarine at a time when the horrors of submarine warfare were fresh in the memory of everyone. Merely a limitation on submarine tonnage was accepted—a limitation placed at a figure higher than that then represented in several of the five navies, while the use of the submarine as a commerce destroyer was branded as piracy.[1] A limitation was laid on capital ships (battleships above 10,000 tons) whose efficacy as floating fortresses was already in doubt; but no limitation was imposed on cruisers under 10,000 tons whose remarkable merit had been proved in the war. The committee of military experts had actually proposed a limitation of military dirigibles, but the conference failed to take the suggestion, thus offering an instance when politicians trailed behind war chiefs in the business of peacemaking.

No direct limitation was placed upon the chief enemy of the battleship, the airplane, although an indirect circumscription was imposed on aircraft by the limitation of aircraft carriers over 10,000 tons. Naval adjuncts of this large size were allotted as follows: 135,000 tons each to Great Britain and the United States; 81,000 tons to Japan; 60,000 tons each to France and Italy. But, as in the case of cruisers, no limitation was placed on aircraft carriers under 10,000 tons, while the maximum tonnage allotment for aircraft carriers of the large size was in excess of the tonnage then existing in every one of the five navies. An absolute prohibition was placed

[1] Treaty in relation to the use of submarines and noxious gases in warfare.

upon the use of asphyxiating and poisonous gas in time of war, but the advantage of this self-denying ordinance was partly lost by the failure to limit airplanes—one of the chief means for diffusing death-dealing gases and liquids; nor did the engagement come into force. Finally, there was no limitation on airships in spite of the fact that Zeppelin raids in the war had proved the baneful character of this engine of terror and annihilation.

The achievements of the Washington conference, however, are not to be minimized. The diplomatic understanding regarding the Orient and the psychological effect of an agreement to limit even a few categories of armament were victories of unusual moral value.

The London Naval Conference of 1930

The London Naval Conference of 1930, called to continue the work of the Washington conference, likewise side-stepped the problem of aircraft limitation. Governmental delegations at St. James' Palace included air experts, but no state seriously broached the question of reduction of air forces, save in regard to the question of aircraft carriers. The Washington treaty, as we have already seen, limited aircraft carriers of more than 10,000 tons but not those under that tonnage. In 1921 it was believed that the best type of aircraft carriers would be gigantic ships armed with 8-inch guns which would accompany the battle fleet rather than cruise by themselves. The American carriers *Lexington* and *Saratoga* displacing 33,000 tons each are of this class.

In the following years, however, as naval technic turned away from the capital ship toward the fast and powerful cruiser, there was also a trend in favor of smaller and speedier aircraft carriers which could operate independently of the battle fleet.[1] On the eve of the London conference every naval state was seriously studying this type of car-

[1] See the illuminating dispatches on the subject of the "gunless cruisers" by Paul Scott Mowrer in the *Chicago Daily News*, February 3, 1930, p. 1; April 8, 1930, p. 1.

rier. The British Empire possessed one vessel of this kind, the *Albatross* of 5,000 tons, belonging to the Royal Australian Navy; Japan possessed one, the *Wakamiya* (5,180 tons), while the Japanese navy yards were scheduled to begin construction of another ship, the *Ryujo* of 8,100 tons early in the year 1930; France had one, the *Commandant-Teste* (10,000 tons); and Italy one, the *Giuseppe Miraglia* (4,880 tons).[1] The new type of carrier carries no battery of heavy cannon, but rather a squadron of six or eight airplanes and a few anti-aircraft guns. It has a cruising radius of 8,000 miles; and, while the ordinary cruiser has a firing range of 20 miles, the "gunless cruiser" by catapulting a fleet of airplanes from its deck can strike within a radius of 400 miles. As a destroyer of enemy's commerce, the "gunless cruiser" is expected to prove far more effective than the submarine or the cruiser armed with 6-inch and 8-inch guns.

New factors such as the "gunless cruiser" require readjustment of old methods of strategy, and until their efficacy is fully measured cause considerable apprehension to the naval technicians. Accordingly, when the American delegation at St. James' Palace proposed to classify the new ships according to the guns they carry, rating a carrier with 6-inch guns as a 6-inch cruiser, Japan, Great Britain and France opposed the suggestion on the ground that it would give a country like the United States having a large 6-inch cruiser allotment an undue advantage in building up a fleet of the new type of fighting ship. With this problem in view, the British delegation proposed that a modification be made in the total tonnage of aircraft carriers over 10,000 tons as defined in the Washington treaty as well as limiting those under that tonnage.[2] This proposal was not accepted and the question was referred to a conference of the five states to be called in 1935. On the other hand, Great Britain won

[1] Compare Jane's *Fighting Ships, 1929* (London, 1929), p. 106, 182, 277, 303, 334, 457.

[2] London Naval Conference, 1930, *Second Report of the First Committee* (March 15, 1930), p. 4-5, 11-12.

the point that aircraft carriers under 10,000 tons should be included in the aircraft carrier category of the Washington treaty together with the provision that the gun armament of these vessels should not exceed 6.1 inches in caliber.[1]

While neither the Washington treaty nor the London treaty placed direct limitations upon aircraft, it is obvious that important indirect limitations were placed upon airplanes and seaplanes by the prescriptions imposed on aircraft carriers. In this matter the second treaty made a notable advance upon the Washington agreement. The limitation of air forces, however, is not entirely a problem of naval disarmament; it also concerns land disarmament, and has occupied considerable attention in the comprehensive study of disarmament undertaken by the League of Nations. As Prime Minister MacDonald stated in his letter transmitting the text of the London treaty to the League, it was hoped that the League would find the particular achievements of the treaty a contribution in its larger field of general disarmament.

The Preparatory Commission for the Disarmament Conference

Persistence is a virtue. The untiring efforts of the statesmen who carry on the disarmament program of the League of Nations merits a high measure of admiration. In particular, Viscount (formerly Lord Robert) Cecil will have a conspicuous page in the history of humanity for his leadership in the movement for disarmament during the first decade of the League's existence.

The originators of the League rightly held that if Germany were disarmed on land and sea and air it was incumbent upon other nations to approach the same condition. Art. 8 of the Covenant laid down the principle that "the

[1] Arts. 3-5 and 23 of the London treaty. London *Times*, April 23, 1930, p. 6. Compare the fourth paragraph in Ramsay MacDonald's *Memorandum on the Results of the London Naval Conference from January 21 to April 15, 1930* (Cmd. 3547 of 1930).

maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations." To the Council of the League was intrusted the task of formulating plans for this limitation of armaments—plans which were to be revised at least every ten years. Under Art. 9, a permanent advisory commission on armaments was to be constituted to advise the Council on limitation of armaments.

The story of the League's efforts in this field during the past ten years is too long and involved to relate in this place. A few words must suffice to indicate the relation of aviation to the problem of disarmament as studied at Geneva.

Four months after the organization of the League, the Council set up the Permanent Advisory Commission on Armaments as provided in Art. 9 of the Covenant.[1] This commission is composed of military, naval and air officers of the Governments represented on the Council. Its members are divided into three subcommissions on land, naval and air forces; it is the adviser of the Council on all technical military affairs.

A commission of military experts is not necessarily the best means of promoting disarmament. The First Assembly of the League had a definite opinion on this subject, and insisted upon committing the problem into the care of a Temporary Mixed Commission for the Reduction of Armaments in order to keep it out of the exclusive control of military experts.[2] It was in this commission that Lord Robert Cecil began to play his magnificent rôle. It was he who formulated the idea that disarmament can not be attained directly but only through an atmosphere of mutual confidence and security. There was a necessary preliminary—some guaranty to nations against aggression. Thus, in 1923, the draft treaty of mutual assistance was offered to the Assembly, only to be rejected by the Governments.

[1] Resolution of May 9, 1920, *Official Journal*, I, p. 46.
[2] *Records of the First Assembly, Plenary Meetings* (Geneva, 1921), p. 92.

In 1924, the liberal-minded British and French premiers, MacDonald and Herriot, after making a sensible settlement of the question of German reparation at the London conference, journeyed to Geneva and laid down a new basis for armament limitation. "There can be no arbitration or security without disarmament, nor can there be disarmament without arbitration and security," said Ramsay MacDonald before the Assembly.[1] Thereupon, the First and Third Committees of the Assembly sought a new formula based upon arbitration and security as a prelude to disarmament. But their work—the Geneva protocol for the pacific settlement of international disputes—met the same fate as the draft treaty.

The Locarno treaties of October, 1925, and the entrance of Germany into the League in September, 1926, gave a new trend to the movement for disarmament. In the meanwhile, the Council had established the Preparatory Commission for the Disarmament Conference, to be composed of representatives from the states which are members of the Council and certain other states, including the Soviet Union, Turkey and the United States.[2] This commission, appointed to prepare the way for a universal disarmament conference, is still seeking for an agreed basis of negotiations. All this is preliminary. The disarmament conference remains in the future. At the same time, outside the sphere of the League, the Briand-Kellogg pact of 1928—a general agreement that the settlement of all disputes shall be sought only by pacific means—had added a vague and incalculable element to the situation, while the London Naval Conference of 1930 sought to continue the reduction, begun by the Washington conference of 1921, of the navies of Great Britain, the United States, Japan, France and Italy.

[1] *Records of the Fifth Assembly, Minutes of the Committees, Third Committee,* p. 212 (*Official Journal,* Spec. Sup. No. 26).

[2] Resolution of September 26, 1925, *Official Journal,* VII, p. 164, 1403.

The Three Arms of War—Military, Naval and Air Forces

In all these maneuvers for a *modus operandi,* the problem of reduction of air forces has naturally received its share of attention. But, as regards the three branches of warfare, the thesis of the French delegation, reiterated on frequent occasions, is difficult to answer, namely, that there is a unity in military forces that can not be ignored. In the words of M. Paul-Boncour, "no limitation of armaments is possible unless it covers the three categories of armaments—land, air and naval." [1] In other words, special agreements to accept unequal limitations in one arm must be balanced by compensating inequalities elsewhere. If France submitted at the Washington conference to the small end of the 5-5-3-1.67 ratio in capital ships, its army and air forces claim special consideration in the general arms agreement when it finally comes. This tendency of France to look upon the disarmament question in the whole, instead of attacking it arm by arm, explained its reluctance to participate in the ill-fated Geneva Naval Conference of 1927 and in the London Conference of 1930.

The last statement is made with no intention of casting reproach upon France. Perhaps to offset any such inference we should call attention to the fact that Salvador de Madariaga, former director of the Secretariat on Disarmament of the League of Nations and now professor of Spanish literature in Oxford University, in a graceful but masterly book, puts first blame for the small progress in disarmament upon America and Great Britain—on the former for its policy of isolation, and on the latter for allowing its Admiralty and General Staff to dominate its premiers.[2]

The Relation of Military and Civil Aviation

The problem of disarmament is so intricate that, whether

[1] League of Nations, *Documents of the Preparatory Commission of the Disarmament Conference, Minutes of the Third Session, March 21-April 26, 1927, Series IV,* p. 169 (C. 310. M. 109. 1927. IX).

[2] *Disarmament,* Ch. V-VI, (New York, Coward, McCann, 1929).

attacked as a whole or attacked in part, difficulties multiply in both directions. One of the perplexing questions as to land forces is whether to count the reserves—trained officers and men who are in civil employment for the time being—as members of the army. The question is truly formidable, especially when France takes one side and Great Britain the other. But the attempt to limit air forces encounters the same question and another one quite as awkward. For in aviation, machines as well as men may become weapons of war. The relation between military aviation and civil aviation is one of the storm centers of disarmament.

The question of civil aviation came directly before Subcommission A of the Preparatory Commission for the Disarmament Conference in its first sessions of 1926. It was found that the delegations of Germany and the United States held the opinion that civil aviation is of comparatively little value as a possible weapon of war; while Great Britain, France and Italy and all the other states agreed that both the personnel and material in civil aviation constitute possible war armament of a very high value because of the ease and rapidity with which they can be utilized for military purposes.[1]

Germany and the United States refused to budge; and so the subcommission voted "that any limitation of civil aviation raises economic and political questions" and then proceeded to consider limitation of military and civil aviation as a whole.

Three divergent views appeared. France, Italy, Belgium, Poland, Yugoslavia, Czechoslovakia, Rumania and Chile declared that "in order to be efficient in practice, any method must provide for the limitation of military and civil aviation as a whole; the limitation of military aviation only would be ineffectual, for it could be balanced by a corresponding expansion of civil aviation." Germany, the United States,

[1] League of Nations, *Preparatory Commission for the Disarmament Conference, Report of Subcommission A*, p. 111 (C. 739. M. 278. 1926. IX).

the Netherlands, Spain and the Argentine asserted "that the limitation of civil aviation was impossible, because they thought that any method for the reduction or limitation of air armaments can apply only to the war aircraft of different countries, and should not interfere with the expansion of communication, commerce or the building of civil aircraft." In the third place, Germany, the United States, the British Empire, Japan, the Netherlands, Sweden, Spain and Finland subscribed to the proposition that the subcommission was not competent to discuss limitation of civil aviation because of the *economic* consequences it might involve.

The last point of view eventually put a stop to the discussion of direct methods of limiting civil aviation. But the question bobbed up again in connection with reserves. Should there be a limit to the number of reserves? If so, who was a reservist? In case the definition were extended to those who had received military training but were serving in civil aviation, the limitation of numbers might hamper commercial progress. The arguments thus ran around in circles. Although unanimous consent could be reached on little else than an agreement to disagree, the discussions developed the pros and cons of various methods including the following:

1. Limitation of personnel.
2. Limitation of material.
3. Combined method.
4. Limitation of military and civil aviation as a whole.

The difficulties confronting Subcommission A are not to be minimized, but it should be said that the American and German refusal to consider limitations on civil aviation has considerable justification. Both countries wish to expand their air-lines without limit. And why should limits be set? The plan for restriction of military and civil aviation as a whole suggested by France and other states including Italy prescribed bounds somewhat as follows: a state would accept a limit of 500,000 horse-power for the total motive power of aviation as a whole; of this, 200,000 horse-power might

be military and 300,000 civil.[1] The advantage would be that states could feel assured that the total air forces of their neighbors would not exceed a maximum figure. The disadvantage lies in the attempt to fetter a useful industry whose growth can not yet be calculated and whose growth should not be stunted. The proposal, indeed, savors of dilatory tactics.

Report of the Committee of Experts on Civil Aviation

The military experts at Geneva decided to take economic advice as to the consequences to civil aviation resulting from any method of aggregate limitation of military and civil aeronautics. So the question was referred to a committee of economic experts to meet at The Hague. When this committee assembled in February, 1927, as Madariaga laments, the "economic" experts in many cases turned out to be the same military experts who had represented their nations at Geneva.

Nevertheless, there were a number of experienced civilians including Messrs. Harry F. Guggenheim of the United States and M. A. Plesman of the Netherlands, who contributed to the final conclusion that "in any limitation of air armament it is essential to avoid hampering the development of civil aviation" and that it is "desirable that every effort should be directed toward differentiating more and more clearly between civil and military aviation." In fact one civilian member of the committee, a Dutch manufacturer, went so far as to condemn all governmental connections with the aeronautical industry, especially subventions and war office grants as a nuisance. They prevented, he said, the free development of civil aviation in securing safety and efficiency in planes and kept the attention of manufacturers centered on building for speed—a military requirement.

[1] *Report of Subcommission A*, p. 120-121 (C. 739. M. 278. 1926. IX).

The final report of the economic experts Madariaga dubs[1] as timid and almost pusillanimous. Nevertheless, it ventured to suggest a policy that was progressive although cautious. The proposals were:[2]

1. It is desirable that the development of civil aviation should be directed solely toward economic ends, and should remain outside the sphere of military interests.

2. Civil aviation should be organized on autonomuos lines, and every effort should be made to keep it separate from military aviation.

3. If states intervene in any capacity, whether directly or indirectly, wholly or partially, in civil aviation undertakings, it is desirable that the state organs dealing with the matter should be quite separate from the organs dealing with military aviation. The suggestions made below should apply to all civil aviation undertakings, whether private or state-owned. [A footnote to the report here reads: "It should be noted that the committee did not mean this proposal to apply to cases where the civil and military aviation services are united under a single ministry; in such cases it is even desirable for each of these two branches to be operated with complete autonomy."]

4. It is desirable that Governments should refrain from prescribing the embodiment of military features in the build of civil aviation material, so that this material may be constructed for purely civil purposes, more particularly with a view to providing the greatest possible measure of security and the most economic return.

In this connection, and with a view to differentiating still further between the material of civil and that of military aviation, it would be particularly desirable, as far as possible, to avoid using military aviation material for civil aviation undertakings, and in particular for the operation of air-transport lines.

5. The committee desires to point out that a note of warning should be sounded against contemplating any restriction of the construction of civil aircraft by the application of present-day aeronautical formulæ, such as horse-power, ratio of loading per horse-power, and ratio of wing areas per horse-power, etc., which, in the rapid developments taking place, would unquestionably lead to serious economic consequences.

[1] Madariaga, *Disarmament*, p. 195 (New York, Coward, McCann, 1929).

[2] League of Nations, *Documents of the Preparatory Commission of the Disarmament Conference, Minutes of the Third Session, March 21 to April 26, 1927, Series IV*, p. 419 (C. 310. M. 109. 1927. IX).

6. As regards personnel and, in particular, pilots, it would be desirable that civil aviation undertakings of all kinds should not require such personnel to have received a military training or give preference to those who have received such training.

It is *a fortiori* desirable that these undertakings should not give their personnel such training as would be of use solely for military purposes.

It would also be desirable as far as possible to avoid seconding personnel from military in civil aviation for the purposes of the latter.

7. The committee desires to point out the undesirable effects which may result from the direct or indirect encouragement by Governments of civil air-transport lines for military rather than for economic purposes.

8. At the present time, civil aviation in most cases has become national in character. It would seem desirable to encourage the conclusion of economic agreements between civil aviation undertakings in the different countries.

It is to be observed that the heart of the experts' report consists of the recommendation for the severance of all connection between civil and military aviation. It is true that the exhortation addressed to Governments to intrust their internal regulation of military and civil aviation to separate organs of administration was vitiated by a footnote saying that the committee did not mean the proposal to apply to countries where the military and civil aviation services are united under a single ministry. This had been the case in England since 1919, and Italy had just set up a ministry of the same sort. In the following year, France ignored the experts' advice and followed the British and Italian examples in creating its ministry of air.

There are, of course, many strong considerations for a centralization of supervision in one ministry.[1] But it is doubtful whether all the advantages could not be obtained by a proper liaison between the separate departments. Such a system of coordination obtains in the United States where, under the air commerce act of 1926, the promotion and regulation of civil aviation is intrusted to the Aeronautics Branch of the

[1] Compare G. A. Nebout, *Le Ministère de l'Air* (Paris, 1929), p. 136-140.

Department of Commerce while military aviation is confined to the War and Navy Departments.

Report of the Preparatory Commission in 1927

The Preparatory Commission gave serious consideration to the experts' report and in the somewhat sketchy project of a convention for disarmament submitted to the Council in 1927 the following provisions were included:[1]

1. If the high contracting parties intervene in any capacity, whether directly or indirectly, wholly or partially, in civil aviation undertakings, they agree that the state organs dealing with the matter shall be quite separate from the organs dealing with military aviation. It is agreed that this undertaking does not prevent the union of civil and military aviation under a single ministry provided that the two subjects are dealt with separately and independently.
2. The high contracting parties shall refrain from prescribing the embodiment of military features in the build of civil aviation material so that this material may be constructed for purely civil purposes, more particularly with a view to providing the greatest possible measure of security and the most economical return.
3. The high contracting parties undertake not to require of civil aviation undertakings that they should employ only personnel specially trained for military purposes. They undertake to authorize only as a provisional and temporary measure the seconding of personnel to, and the employment of military aviation material in, civil aviation undertakings.
4. The high contracting parties undertake not to subsidize, directly or indirectly, air-lines principally established for military purposes, instead of being established for economic administrative or social purposes.
5. The high contracting parties undertake to encourage as far as possible the conclusion of economic agreements between civil aviation undertakings in the different countries.

The Italian delegation alone took exception to the above-mentioned clauses. Undaunted by the Italian objection, when the draft treaty came to the attention of the Assembly of the League in 1927, it recommended to all Member states to

[1] *Minutes of the Third Session*, p. 406-407 (C. 310. M. 109. 1927. IX).

take away the embarrassment caused to the disarmament program by the close liaison between military and civil aviation.[1] It went further than this, and, envisioning the possibility of developing a great system of an international grouping of air-traffic companies that would tend to make aviation more international than national, it asked the Council to instruct the Committee for Communications and Transit to study the question.

In concluding this brief account of the effort to limit military aviation we may ask: How far has the problem been carried on its way to solution? The answer is: Not very far.

In fact, Governments have discovered that in proportion to their devastating effects upon the enemy the air forces are a less expensive branch of the service than land forces. With the mounting cost of armaments, skillful budgetary economies must be practiced. Accordingly a marked shift in military budgets is in progress. States like France and Poland which have materially reduced their land forces in the last few years are now increasing their air units. At present, there seems to be little disposition among continental states to put any limitations on aircraft. This will probably be the case until the technical readjustment between air and land equipment is more complete. The problem for the statesman is to develop from realities, as rapidly as possible, international understandings based on adequate consideration for national demands.

Whether actualities call for a vigorous pursuit of the possibilities through the League of Nations commission or for an attempt to secure agreements for limitation of air forces similar to the Washington treaty on navies—this is at present a foremost question. Speaking recently in the House of Commons, Sir Samuel Hoare, former secretary for air in the Conservative Government, advised the air ministry of the

[1] Resolution of September 26, 1927, *Official Journal*, Spec. Sup. No. 57, October, 1927, p. 22.

Labor Government to leave the problem of limitation as simple as possible; and he solemnly warned his successors in office to "keep clear of the mass of technical details that some representatives at Geneva had heaped on this problem during the past few years."[1]

In England there is a strong sentiment to abandon for the moment the attempt for a general disarmament agreement and to advance step by step in separate pacts seeking an early parity agreement between the three great European air powers—France, Great Britain and Italy. Without regard to the theory as to whether the problem of disarmament should be approached as a whole or in part, the ideal statesman will be ready to take advantage of all possibilities to find a just and reasonable solution, bearing in mind that national security must be built on more solid foundations than armies and navies.

The Law of Aerial Warfare

Another phase of military regulation remains for our attention, namely the law of war in the air. When the Great War began there were few conventional rules governing the conduct of aerial hostilities. The Hague declaration of 1899 prohibiting the use of projectiles from aircraft had expired in 1904, and the great states did not sign a similar declaration at the Second Hague Conference. It is true that Art. 25 of the regulations on the laws and customs of war on land of 1907 provided: "The attack or bombardment, by whatever means, of towns, villages, dwellings or buildings, which are undefended, is prohibited." The words by *whatever means* had been added to the text of 1899, on the motion of the French delegation at the Second Hague Conference for the express purpose of forbidding the bombardment of undefended towns by means of aircraft.[2] But during the war

[1] London *Times*, March 19, 1930, p. 1.

[2] Ministère des Affaires Etrangères, *Deuxième Conférence Internationale de la Paix. La Haye, 15 Juin-18 Octobre 1907; Actes et Documents* (The Hague, Imprimerie Nationale, 1907), III, p. 16.

this article was not binding on any of the belligerents, although the convention covering the regulations had been signed and ratified by Germany, Austria-Hungary, France and Great Britain. The convention applied only in cases when all belligerents in a war were bound thereby, and ratifications had not been forthcoming for Italy, Serbia, Montenegro, Bulgaria and Turkey.[2]

After the war the need for codification of the laws of aerial warfare was urged by Garner, Henry-Coüannier, Spaight, Phillimore, Bellot, Strupp, Higgins and other jurists. The International Law Association at its first meeting following the war, in 1920, undertook the study of the question, and at its Stockholm session in 1924 adopted a project of convention which was recommended to the consideration of Governments.[3] At the same time, the Comité Juridique International de l'Aviation carried forward an investigation of the question as an integral subject in the air code which it was constructing step by step.[4]

The world was still filled with the horrors of the devastating inventions inspired by the war—some of them still held in abeyance. The combination of chemistry and aeronautics figured prominently in discussions of how the next war would be fought. It was said that two men in an aircraft would be able to fly over a warship at a great height and besprinkle its decks with a poisonous liquid so potent that three drops would kill a man and a small quantity lodged in the crevices of a ship would render it uninhabitable for days. Another device was an airplane equipped with tanks of toxic liquid which, falling like rain from nozzles, would bring death to everyone beneath its path in the sky.

The International Committee of the Red Cross in 1920 gave its attention to the need for a convention additional to the Geneva convention of 1907 adapting aerial war law to

[2] Compare James W. Garner, *International Law and the World War*, I, p. 467,

[3] See above, p. 114-115.

[4] Compare *Compte Rendu du Quatrième Congrès International de Legislation Aèrienne, Monaco, 1921*, p. 241.

the principles of the Geneva convention for ameliorating the sufferings of war. The attention of the Assembly of the League of Nations was called to the question. Finally, the Twelfth International Red Cross Conference, meeting in Geneva in October, 1925, drafted such a convention and recommended it to the consideration of all Governments for universal adoption.[1]

The Commission of Jurists of 1922-1923

As we have already seen, the conference of Washington in 1921 failed to put any limitations upon the air armaments of the great states. But in the realm of war law it placed restrictions upon the employment of submarines against merchantmen, prohibited the use of noxious gases in all cases and called for a Commission of Jurists of the five great states to meet at The Hague and draft a convention of aerial war law.[2]

The Commission of Jurists met at the Peace Palace from December 11, 1922, to February 9, 1923.[3] Their discussions resulted in a well-planned project of convention which was duly transmitted to the Governments of the great states for future action.[4] This draft, in its general principles, has met the approval of jurists and juridical societies throughout the world. It awaits the calling of an international conference for further discussion and collective decision.

In view of the elaborate arrangements now under way to preserve the peace of the world, codification of the laws

[1] Compare Charles L. Julliot, *La Convention de Genève de 1929 et l'Immunisation des Appareils Sanitaires Aériens* (Paris, 1930).

[2] *Conference on Limitation of Armament*, Sen. Doc. No. 126, 67th Cong., 2d sess.

[3] The delegates included John Bassett Moore and Albert H. Washburn for the United States; Sir Rennell Rodd and Sir Cecil Hurst for Great Britain; Professors de Lapradelle and Basdevant for France; Senator Vittorio Ricci for Italy; and Baron Matsui and Mr. Matsuda for Japan. Since the conference met on the territory of the Netherlands, two Dutch jurists were invited, namely Professors Struycken and Van Eysinga. For the text of the draft rules see British Parliamentary Papers, *Revision of the Rules of Warfare* (Cmd. 2201 of 1924).

[4] See Appendix, p. 211.

of war has sometimes been branded as defective psychology: nations should think in terms of peace and not in terms of war. There are others who claim that attention directed to the law of war is wasted effort, since all laws are violated in time of war. To both of these views Professor Garner has well answered that, considering the rôle that aircraft is fated to play in war time and the frightful consequences of its unregulated use, codification of aerial war law is urgently needed.[1] The cynics may claim that it will be violated in the stress of conflict. But nevertheless few will deny the fact that solemnly ratified treaties have at least a deterrent effect upon belligerent nations.

In concluding this study of governmental control of aviation it may be permitted to say that aviation is preeminently international in character. The problem of reducing international confusion to order seems to involve in the first instance the adoption of codes regulating international communication, as well as the establishment of workable international legislative, administrative and judicial processes. At the same time, the commercial rivalries of great air systems supported by governmental subsidies are a constant source of diplomatic solicitude. In time, international rivalries may be partially submerged in international pools of air traffic, and the air may become, as Fauchille pictured, as free to navigation as are the high seas. But, in any case, diplomacy must ever smooth the path of international misunderstandings. Finally, aircraft as a weapon of war is intimately bound up in the great problem of international limitation of armaments, contributing to the difficulties of this problem and dependent in a large measure on its solution.

No better estimate of the essential characteristics and requirements of aviation as an international phenomenon has been expressed than the cablegram in which Charles A. Lindbergh responded to the Committee on Cooperation between

[1] "The Proposed Rules for Regulation of Aerial Warfare," *American Journal of International Law*, January, 1924, p. 81.

Civil Aviation Undertakings at Geneva. This committee, which met for the first time on July 8, 1930, received the following analysis from Mr. Lindbergh:[1]

Aviation must be considered from an international standpoint. An ability to cover great distances in a relatively short time makes it a leading factor in world intercourse.

Every advance in transportation has stimulated commerce and brought people into closer contact with each other. One after another the fears and prejudices of isolation have been overcome as methods of communication and transport improved. Aviation, with its great speed and freedom of movement, is too powerful an instrument of progress to be long confined by the remaining artificial restrictions left over from an age of provincialism. Constructive thought is turning more and more toward international cooperation and nothing is more important in this field than the simplification of communication and intercourse. At the present time, while the world's air-lines are in a formative stage in their development, much can be done to encourage their progress and to avoid unnecessary complications in the future.

There is a great need for international cooperation in the standardization of airways. A uniform system of markings and signals should be decided upon and a comprehensive meteorological and radio reporting system established.

The adoption of uniform regulations is of utmost importance. In some countries today, aircraft are placed in the same class as ocean steamers and must go through a similar procedure in clearing. As a result clearance charges are high and delays often comparatively long in relation to time spent in actual travel. There are instances where only aircraft registered within a country and carrying its markings are allowed to operate. Others where it is required that a native pilot be carried. In certain countries a visiting pilot must qualify for a license before he is permitted to fly. Numerous and complicated papers are often required where a careful study would make most of them unnecessary. Lack of uniformity is so great that it is at times impossible for a private flier to obtain accurate informa-

[1] Text of cablegram sent by Mr. Lindbergh July 5; reprinted from copy furnished by him.

tion regarding the regulations he will encounter on an international trip without unreasonable effort and delay.

The intelligent consideration of these and many other problems confronting aviation at the present time will be of untold assistance in the development of international air commerce.

Aviation does not concern one nation alone. Its ultimate value lies in bringing the various countries of the earth into closer contact. It is not possible to develop air transport and communication in its broadest aspect without the cooperation of the entire world.

APPENDIX I

1. CONVENTION RELATING TO THE REGULATION OF AIR NAVIGATION, 1919[1]

Chapter I. General Principles

Art. 1. — The high contracting parties recognize that every power has complete and exclusive sovereignty over the air space above its territory.

For the purpose of the present convention the territory of a state shall be understood as including the national territory, both that of the mother country and of the colonies, and the territorial waters adjacent thereto.

Art. 2. — Each contracting state undertakes in time of peace to accord freedom of innocent passage above its territory to the aircraft of the other contracting states, provided that the conditions laid down in the present convention are observed.

Regulations made by a contracting state as to the admission over its territory of the aircraft of the other contracting states shall be applied without distinction of nationality.

Art. 3. — Each contracting state is entitled for military reasons or in the interest of public safety to prohibit the aircraft of the other contracting states, under the penalties *provided* by its legislation and subject to no distinction being made in this respect between its private aircraft and those of the other contracting states, from flying over certain areas of its territory.

In that case the locality and the extent of the prohibited areas shall be published and notified beforehand to the other contracting states.

[1] *International Commission for Air Navigation, Convention relating to the Regulation of Aerial Navigation dated October 13, 1919* (Paris, May 1929), p. 1-10. The text contains all the modifications (in italics) made by the International Commission for Air Navigation in the original text of the convention of October 13, 1919, including those adopted at the Fifteenth Session, Brussels, March, 1929, by Resolutions 457, 461, 464, 466, 470, 472, 473, 476 and 477 reproduced in the *Official Bulletin* No. 15 and which came into force September 15, 1929. The reader is referred by notes to complementary texts, when necessary.

[French and Italian texts omitted.]

ART. 4. — Every aircraft which finds itself above a prohibited area shall, as soon as aware of the fact, give the signal of distress provided in Par. 17 of Annex D and land as soon as possible outside the prohibited area at one of the nearest aerodromes of the state unlawfully flown over.

CHAPTER II. NATIONALITY OF AIRCRAFT

ART. 5. — No contracting state shall, except by a special and temporary authorization, permit the flight above its territory of an aircraft which does not possess the nationality of a contracting state *unless*[1] *it has concluded a special convention with the state in which the aircraft is registered. The stipulations of such special convention must not infringe the rights of the contracting parties to the present convention and must conform to the rules laid down by the said convention and its annexes. Such special convention shall be communicated to the International Commission for Air Navigation which will bring it to the knowledge of the other contracting states.*[2]

ART. 6. — Aircraft possess the nationality of the state on the register of which they are entered, in accordance with the provisions of Section I (*c*) of Annex A.

[1] This article was modified to read as above by a protocol dated in London October 27, 1922, which entered into force on December 14, 1926.
Resolution No. 32 (O. B. 2, p. 27).
Text of this protocol (O. B. 8, p. 87).
Signatures (O. B. 8, p. 19).
Ratifications (O. B. 12, p. 17).
Entry into force (O. B. 12, p. 17).
Adhesions (O. B. 15, p. 23).

[2] Special agreements kept in force by virtue of the new stipulations of Art. 5:
Agreement between Great Britain and Switzerland (O. B. 2, p. 6).
Convention between France and Switzerland (O. B. 2, p. 9).
Agreement between Great Britain and Norway (O. B. 2, p. 17 and O. B. 4, p. 7).
Arrangement between Belgium and Switzerland (O. B. 6, p. 9).
Convention between France and Germany (O. B. 12, p. 6).
Convention between Denmark and Norway (O. B. 13, p. 4).
Convention between Denmark and Germany (O. B. 13, p. 9).
Convention between Sweden and Norway (O. B. 13, p. 12).
Convention between Sweden and Germany (O. B. 13, p. 19).
Convention between Belgium and Germany (O. B. 13, p. 28).
Agreement between Germany and Great Britain (O. B. 13, p. 31).
Agreement between Poland and Austria (O. B. 14, p. 4).
Convention between Italy and Germany (O. B. 14, p. 6).
Convention between the Netherlands and Norway (O. B. 15, p. 3).
Convention between the Netherlands and Switzerland (O. B. 15, p. 5).
Treaty between Czechoslovakia and Austria (O. B. 15, p. 8).
Convention between Italy and Spain (O. B. 15, p. 12).

ART. 7. — No aircraft shall be entered on the register of one of the contracting states unless it belongs wholly to nationals of such states.

No incorporated company can be registered as the owner of an aircraft unless it possess the nationality of the state in which the aircraft is registered, unless the president or chairman of the company and at least two-thirds of the directors possess such nationality, and unless the company fulfills all other conditions which may be prescribed by the laws of the said state.

ART. 8. — An aircraft can not be validly registered in more than one state.

ART. 9. — The contracting states shall exchange every month among themselves and transmit to the International Commission for Air Navigation referred to in Art. 34 copies of registrations and of cancellations of registrations which shall have been entered on their official registers during the preceding month.[3]

ART. 10. — All aircraft engaged in international navigation shall bear their nationality and registration marks as well as the name and residence of the owner in accordance with Annex A.

CHAPTER III. CERTIFICATES OF AIRWORTHINESS AND COMPETENCY

ART. 11. — Every aircraft engaged in international navigation shall, in accordance with the conditions laid down in Annex B, be provided with a certificate of airworthiness issued or rendered valid by the state whose nationality it possesses.

ART. 12. — The commanding officer, pilots, engineers and others members of the operating crew of every aircraft shall, in accordance with the conditions laid down in Annex E, be provided with certificates of competency and licenses issued or rendered valid by the state whose nationality the aircraft possesses.

ART. 13. — Certificates of airworthiness and of competency and licenses issued or rendered valid by the state whose nationality the aircraft possesses, in accordance with the regulations

[3] Resolution No. 7 (O. B. 1, p. 16).
Resolution No. 290 (O. B. 10, p. 22).

established by Annex B and Annex E and hereafter by the International Commission for Air Navigation, shall be recognized as valid by the other states.[4]

Each state has the right to refuse to recognize for the purpose of flights within the limits of and above its own territory certificates of competency and licenses granted to one of its nationals by another contracting state.

ART. 14. — No wireless apparatus shall be carried without a special license issued by the state whose nationality the aircraft possesses. Such apparatus shall not be used except by members of the crew provided with a special license for the *purpose*.

Every aircraft used in public transport and capable of carrying ten or more persons[5] shall be equipped with sending and receiving wireless apparatus when the methods of employing such apparatus shall have been determined by the International Commission for Air Navigation.

This commission may later extend the obligation of carrying wireless apparatus to all other classes of aircraft in the conditions and according to the methods which it may determine.[6]

CHAPTER IV. ADMISSION TO AIR NAVIGATION ABOVE FOREIGN TERRITORY

ART. 15. — Every aircraft of a contracting state has the right to cross the air space of another state without landing. In this case it shall follow the route fixed by the state over which the flight takes place. However, for reasons of general security it will be obliged to land if ordered to do so by means of the signals provided in Annex D.

[4] The rules concerning the preparation of the certificates of airworthiness and of competency and licenses were the subject of four resolutions of the I. C. A. N. which are operative, as regards the contracting states, in like manner as the annexes of the convention:

(A) Resolution No. 102 (O. B. 4, p. 24-31) in force as from February 10, 1924.

(B) Resolution No. 114 (O. B. 5, p. 19 and 20) in force as from February 10, 1924, modified by Resolution No. 356 (O. B. 12, p. 23).

(C) Resolution No. 129 (O. B. 5, p. 29) in force as from June 20, 1924.

(D) Resolution No. 405 (O. B. 13, p. 54) in force as from September 15, 1928.

The rules concerning the minimum requirements for airworthiness certificates were the subject of 18 resolutions of the I. C. A. N. . . .

[5] Resolution No. 234 (O. B. 8, p. 36).

[6] These regulations are fixed by Resolution No. 471 (O. B. 15, p. 45) of the I. C. A. N. which is operative, as regards the contracting states, in like manner as the annexes of the convention and came into force on January 1, 1930.

Every aircraft which passes from one state into another shall, if the regulations of the latter state require it, land in one of the aerodromes fixed by the latter. Notification of these aerodromes shall be given by the contracting states to the International Commission for Air Navigation and by it transmitted to all the contracting states.[7]

The establishment of international airways shall be subject to the consent of the states flown over.[8]

Art. 16. — Each contracting state shall have the right to establish reservations and restrictions in favor of its *national* aircraft in connection with the carriage of persons and goods for hire between two points on its territory.

Such reservations and restrictions shall be immediately published, and shall be communicated to the International Commission for Air Navigation, which shall notify them to the other contracting states.[7]

Art. 17. — The aircraft of a contracting state which establishes reservations and restrictions in accordance with Art. 16, may be subjected to the same reservations and restrictions in any other contracting state, even though the latter state does not itself impose the reservations and restrictions on other foreign aircraft.

Art. 18. — Every aircraft passing through the territory of a contracting state, including landing and stoppages reasonably necessary for the purpose of such transit, shall be exempt from any seizure on the ground of infringement of patent, design or model, subject to the deposit of security the amount of which in default of amicable agreement shall be fixed with the least possible delay by the competent authority of the place of seizure.

Chapter V. Rules to be Observed on Departure when Under Way and on Landing

Art. 19. — Every aircraft engaged in international navigation shall be provided with:

(*a.*) A certificate of registration in accordance with Annex A;

[7] Resolution No. 11 (O. B. 1, p. 18).

[8] Resolution No. 443 (O. B. 14, p. 30).

(*b.*) A certificate of airworthiness in accordance with Annex B;

(*c.*) Certificates and licenses of the commanding officer, pilots and crew in accordance with Annex E;

(*d.*) If it carries passengers, a list of their names;

(*e.*) If it carries freight, bills of lading and manifest;

(*f.*) Log books in accordance with Annex C;

(*g.*) If equipped with wireless, the special license prescribed by Art. 14.

ART. 20. — The log books shall be kept for two years after the last entry.

ART. 21. — Upon the departure or landing of an aircraft, the authorities of the country shall have, in all cases, the right to visit the aircraft and to verify all the documents with which it must be provided.

ART. 22. — Aircraft of the contracting states shall be *entitled* to the same measures of assistance for landing, particularly in case of distress, as national aircraft.

ART. 23. — With regard to the salvage of aircraft wrecked at sea the principles of maritime law will apply, in the absence of any agreement to the contrary.

ART. 24. — Every aerodrome in a contracting state, which upon payment of charges is open to public use by its national aircraft, shall likewise be open to the aircraft of all the other contracting states.

In every such aerodrome there shall be a single tariff of charges for landing and length of stay applicable alike to national and foreign aircraft.[9]

ART. 25. — Each contracting state undertakes to adopt measures to insure that every aircraft flying above the limits of *its* territory and that every aircraft wherever it may be, carrying its nationality mark, shall comply with the regulations contained in Annex D.

Each of the contracting states undertakes to insure the prosecution and punishment of all persons contravening these regulations.[10]

[9] Resolution No. 408 (O. B. 13, p. 57).

[10] Resolution No. 18 (O. B. 1, p. 23).

Chapter VI. Prohibited Transport

Art. 26. — The carriage by aircraft of explosives and of arms and munitions of war is forbidden in international navigation.[11] No foreign aircraft shall be permitted to carry such articles between any two points in the same contracting state.

Art. 27. — Each state may, in aerial navigation, prohibit or regulate the carriage or use of photographic apparatus. Any such regulations shall be at once notified to the International Commission for Air Navigation, which shall communicate this information to the other contracting states.[12]

Art. 28. — As a measure of public safety, the carriage of objects other than those mentioned in Arts. 26 and 27 may be subjected to restrictions by any contracting state.[11] Any such regulations shall be at once notified to the International Commission for Air Navigation, which shall communicate this information to the other contracting states.[13]

Art. 29. — All restrictions mentioned in Art. 28 shall be applied equally to national and foreign aircraft.[14]

Chapter VII. State Aircraft

Art. 30. — The following shall be deemed to be state aircraft:

(*a.*) Military aircraft.

(*b.*) Aircraft exclusively employed in state service, such as posts, customs, police.

Every other aircraft shall be deemed to be a private aircraft.

All state aircraft other than military, customs and police aircraft shall be treated as private aircraft and as such shall be subject to all the provisions of the present convention.

Art. 31. — Every aircraft commanded by a person in military service detailed for the purpose shall be deemed to be a military aircraft.

Art. 32. — No military aircraft of a contracting state shall fly over the territory of another contracting state nor land thereon without special authorization. In case of such *authorization*

[11] Resolution No. 228 (O. B. 8, p. 34).

[12] Resolution No. 11 (O. B. 1, p. 18).

[13] Resolution No. 11 (O. B. 1, p. 18).

[14] Resolution No. 228 (O. B. 8, p. 34).

the military aircraft shall enjoy, in principle, in the absence of special stipulation the privileges which are customarily accorded to foreign ships of war.

A military aircraft which is forced to land or which is requested or summoned to land shall by reason thereof acquire no right to the privileges referred to in the above paragraph.

Art. 33. — Special arrangements between the states concerned will determine in what cases police and customs aircraft may be authorized to cross the frontier. They shall in no case be entitled to the privileges referred to in Art. 32.

Chapter VIII. International Commission for Air Navigation

Art. 34. — There shall be instituted, under the name of the International Commission for Air Navigation, a permanent commission placed under the direction of the League of Nations[15] and composed of:

Two representatives of each of the following states: The United States of America, France, Italy and Japan;

One representative of Great Britain and one of each of the British Dominions and of India;

One representative of each of the other contracting states.

Each state represented on the commission (Great Britain, the British Dominions and India counting for this purpose as one state) *shall have one vote.*[16]

The International Commission for Air Navigation shall determine the rules of its own procedure and the place of its per-

[15] Resolutions Nos. 19 and 20 (O. B. 1, p. 23).
Resolution No. 277 (O. B. 10, p. 10).

[16] This article was modified to read as above by a protocol dated in London the 30th June, 1923, which entered into force on the 14th December, 1926.
Resolution No. 55 (O. B. 2, p. 38).
Resolution No. 87 (O. B. 4, p. 16).
Text of this protocol (O. B. 8, p. 89).
Signatures (O. B. 8, p. 20).
Ratifications (O. B. 12, p. 17).
Entry into force (O. B. 12, p. 17).
Adhesions (O. B. 15, p. 24).

manent seat,[17] but it shall be free to meet in such places as it may deem convenient. Its first meeting shall take place at Paris.[18] This meeting shall be convened by the French Government, as soon as a majority of the signatory states shall have notified to it their ratification of the present convention.

The duties of this commission shall be:

(*a.*) To receive proposals from or to make proposals to any of the contracting states for the modification or amendment of the provisions of the present convention, and to notify changes adopted;

(*b.*) To carry out the duties imposed upon it by the present article and by Arts. 9, 13, 14, 15, 16, 27, 28, 36, and 37 of the present convention;

(*c.*) To amend the provisions of the Annexes A-G;[19]

(*d.*) To collect and communicate to the contracting states

[17] Administration of the Commission (O. B. 5, p. 31). Modified by Resolution No. 415 (O. B. 13, p. 60).

Subcommissions:

Resolutions Nos. 3 and 4 (O. B. 1, p. 13).
Resolutions Nos. 26 and 27 (O. B. 2, p. 25).
Resolution No. 59 (O. B. 3, p. 13).
Resolution No. 108 (O. B. 5, p. 14).
Resolution No. 142 (O. B. 6, p. 25).
Resolution No. 168 (O. B. 6, p. 48).
Resolution No. 237 (O. B. 8, p. 37).
Resolution No. 301 (O. B. 10, p. 26).
Resolution No. 382 (O. B. 12, p. 37).
Resolution No. 446 (O. B. 14, p. 31).
Resolution No. 484 (O. B. 15, p. 49).

[18] Resolution No. 24 (O. B. 1, p. 25).
Resolution No. 57 (O. B. 2, p. 39).
Resolution No. 82 (O. B. 3, p. 33).
Resolution No. 106 (O. B. 4, p. 33).
Resolution No. 133 (O. B. 5, p. 33).
Resolution No. 172 (O. B. 6, p. 50).
Resolution No. 212 (O. B. 7, p. 44).
Resolution No. 243 (O. B. 8, p. 40).
Resolution No. 272 (O. B. 9, p. 29).
Resolution No. 307 (O. B. 10, p. 29).
Resolution No. 344 (O. B. 11, p. 30).
Resolution No. 383 (O. B. 12, p. 38).
Resolution No. 416 (O. B. 13, p. 60).
Resolution No. 447 (O. B. 14, p. 32).
Resolution No. 485 (O. B. 15, p. 50).

[19] Resolution No. 17 (O. B. 1, p. 21).
Resolution No. 76 (O. B. 3, p. 30).
Resolution No. 463 (O. B. 15, p. 37).

information of every kind concerning international air navigation;[20]

(*e.*) To collect and communicate to the contracting states all information relating to wireless telegraphy, meteorology and medical science which may be of interest to air navigation;

(*f.*) To insure the publication of maps for air navigation in accordance with the provisions of Annex F;[21]

(*g.*) To give its opinion on questions which the states may submit for examination.[22]

Any modification of the provisions of any one of the annexes may be made by the International Commission for Air Navigation when such modification shall have been approved by three-fourths of the total possible votes which could be cast if all the states were represented: *this majority must, moreover, include at least three of the five following states: the United States of America, the British Empire, France, Italy, Japan.*[23] *Such modification* shall become effective from the time when it shall have been notified by the International Commission for Air Navigation to all the contracting states.

Any proposed modification of the articles of the present convention shall be examined by the International Commission for Air Navigation, whether it originates with one of the contracting states or with the commission itself. No such modification shall be proposed for adoption by the contracting states, unless it shall have been approved by at least two-thirds of the total possible votes.

All such modifications of the articles of the convention (but not of the provisions of the annexes) must be formally adopted by the contracting states before they become effective.

The expenses of organization and operation of the International Commission for Air Navigation shall be borne by the

[20] Resolution No. 11 (O. B. 1, p. 18).
Resolution No. 174 (O. B. 7, p. 16).

[21] Resolution No. 12 (O. B. 1, p. 18).

[22] Resolution No. 130 (O. B. 5, p. 29).

[23] See note No. 16 relating to Par. 5 of Art. 34.

contracting States;[24] *the total shall be allocated in the proportion of two shares each for the United States of America, the British Empire, France, Italy and Japan and one share each for all the other states.*[25]

The expenses occasioned by the sending of technical delegations will be borne by their respective states.

Chapter IX. Final Provisions

Art. 35. — The high contracting parties undertake as far as they are respectively concerned to cooperate as far as possible in international measures concerning:

(*a.*) The collection and dissemination of statistical, current and special meteorological information, in accordance with the provisions of Annex G;[26]

(*b.*) The publication of standard aeronautical maps, and the establishment of a uniform system of ground marks for flying, in accordance with the provisions of Annex F;

[24] Budget for the years 1922 and 1923:
Resolution No. 5 (O. B. 1, p. 13).
Accounts for 1922:
Resolution No. 85 (O. B. 4, p. 14).
Accounts for 1923:
Resolution No. 181 (O. B. 7, p. 25).
Budget for 1924:
Resolution No. 86 (O. B. 4, p. 15).
Accounts for 1924:
Resolution No. 246 (O. B. 9, p. 16).
Budget for 1925:
Resolution No. 141 (O. B. 6, p. 24).
Accounts for 1925:
Resolution No. 311 (O. B. 11, p. 16).
Budget for 1926:
Resolution No. 220 (O. B. 8, p. 26).
Resolutions Nos. 279 and 280 (O. B. 10, p. 16).
Accounts for 1926:
Resolution No. 387 (O. B. 13, p. 42).
Budget for 1927:
Resolutions Nos. 278 and 281 (O. B. 10, p. 15, 16)
Accounts for 1927:
Resolution No. 452 (O. B. 15, p. 24).
Budget for 1928:
Resolution No. 349 (O. B. 12, p. 18).
Budget for 1929:
Resolution No. 418 (O. B. 14, p. 17).
Budget for 1930:
Resolution No. 454 (O. B. 15, p. 25).

[25] See note No. 16 relating to Par. 5 of Art. 34.

[26] Resolution No. 257 (O. B. 9, p. 21).

(*c.*) The use of wireless telegraphy in air navigation, the establishment of the necessary wireless stations, and the observance of international wireless regulations.[27]

ART. 36. — General provisions relative to customs in connection with international air navigation are the subject of a special agreement contained in Annex H to the present convention.

Nothing in the present convention shall be construed as preventing the contracting states from concluding, in conformity with its principles, special protocols as between state and state in respect of customs, police, posts and other matters *of* common interest in connection with air navigation. Any such protocols shall be at once notified to the International Commission for Air Navigation which shall communicate this information to the other contracting states.[28]

ART. 37. — In the case of a disagreement between two or more states relating to the interpretation of the present convention, the question in dispute shall be determined by the Permanent Court of International Justice to be established by the League of Nations, and until its establishment by arbitration.

If the parties do not agree on the choice of the arbitrators, they shall proceed as follows:

Each of the parties shall name an arbitrator, and the arbitrators shall meet to name an umpire. If the arbitrators can not agree, the parties shall each name a third state, and the third states so named shall proceed to designate the umpire, by agreement or by each proposing a name and then determining the choice by lot.

Disagreement relating to the technical regulations annexed to the present convention, shall be settled by the decision of the International Commission for Air Navigation by a majority of votes.[29]

In case the difference involves the question whether the interpretation of the convention or that of a regulation is concerned,

[27] Resolution No. 167 (O. B. 6, p. 48).

[28] Agreement between Poland and Czechoslovakia (O. B. 16, p. 20).
Agreement between France, Belgium and Great Britain (O. B. 16, p. 23).

[29] The procedure to be followed for carrying out the terms of this paragraph was the subject of Resolution No. 50 (O. B. 2, p. 35 and 36) of the I. C. A. N. which is operative, as regards the contracting states, in like manner as the annexes of the convention and is in force as from August 10, 1923.

final decision shall be made by arbitration as provided in the first paragraph of this article.

ART. 38. — In case of war, the provisions of the present convention shall not affect the freedom of action of the contracting states either as belligerents or as neutrals.

ART. 39. — The provisions of the present convention are completed by the Annexes A to H which, subject to Art. 34 (*c*), shall have the same effect and shall come into force at the same time as the convention itself.

ART. 40. — The British Dominions and India shall be deemed to be states for the purposes of the present convention.

The territories and nationals of protectorates or of territories administered in the name of the League of Nations, shall, for the purposes of the present convention, be assimilated to the territory and nationals of the protecting or mandatory states.

ART. 41. — States which have not taken part in the war of 1914-1919 shall be permitted to adhere to the present convention.

This adhesion shall be notified through the diplomatic channel to the Government of the French Republic, and by it to all the signatory or adhering states.[30]

ART. 42. — A state which took part in the war of 1914-1919 but which is not a signatory of the present convention, may adhere only if it is a Member of the League of Nations or, until January 1, 1923, if its adhesion is approved by the Allied and Associated Powers signatories of the treaty of peace concluded with the said state. After January 1, 1923, this adhesion may be admitted if it is agreed to by at least three-fourths of the signatory and adhering states voting under the conditions provided by Art. 34 of the present convention.[31]

Applications for adhesions shall be addressed to the Government of the French Republic, which will communicate them to the other contracting powers. Unless the state applying is ad-

[30] Adhesion of Persia (O. B. 1, p. 5).
Adhesion of Chile (O. B. 10, p. 3).
Adhesion of the Saar Territory (O. B. 12, p. 3).
Adhesion of Sweden (O. B. 13, p. 3).
Adhesion of Denmark (O. B. 13, p. 4).
Adhesion of the Netherlands (O. B. 14, p. 3).

[31] Resolution No. 78 (O. B. 3, p. 31).
Adhesion of Bulgaria: (O. B. 5, p. 3).

mitted *ipso facto* as a Member of the League of Nations, the French Government will receive the votes of the said powers and will announce to them the result of the voting.

ART. 43. — The present convention may not be denounced before January 1, 1922. In case of denunciation, notification thereof shall be made to the Government of the French Republic, which shall communicate it to the other contracting parties. Such denunciation shall not take effect until at least one year after the giving of notice, and shall take effect only with respect to the power which has given notice.[32]

THE PRESENT CONVENTION shall be ratified.

Each power will address its ratification to the French Government, which will inform the other signatory powers.[33]

The ratifications will remain deposited in the archives of the French Government.

The present convention will come into force for each signatory power, in respect of other powers which have already ratified, 40 days from the date of the deposit of its ratification.

On the coming into force of the present convention, the French Government will transmit a certified copy to the powers which under the treaties of peace have undertaken to enforce rules of aerial navigation in conformity with those contained in it.

Done at Paris, the thirteenth day of October nineteen hundred and nineteen in a single copy which shall remain deposited in the archives of the French Government, and of which duly authorized copies shall be sent to the contracting states.

The said copy, dated as above, may be signed until the twelfth day of April nineteen hundred and twenty inclusively.

[32] Denunciation of Bolivia (O. B. 8, p. 3).

[33] Ratifications of the convention:
Belgium, Bolivia, British Empire, France, Greece, Portugal, Kingdom of the Serbs, Croats and Slovenes, Siam (O. B. 1, p. 3).
Japan (O. B. 1, p. 4).
Italy (O. B. 3, p. 3).
Czechoslovakia (O. B. 5, p. 3).
Rumania (O. B. 6, p. 4).
Uruguay (O. B. 7, p. 3).
Poland (O. B. 7, p. 3).
Panama (O. B. 16, p. 2).
(See list of signatures, accessions, ratifications and adhesions in *Official Bulletin* No. 16, p. 37).

In faith whereof the hereinafter named plenipotentiaries whose powers have been found in good and due form have signed the present convention in the French, English and Italian languages, which are equally authentic.

Annexes

[*Note.* Annexes A-G contain practical regulations for the management and control of aircraft and air traffic. They have been extensively modified by the International Commission for Air Navigation in virtue of Art. 34 (*c*) of the convention and in some instances, such as Annex G, have been completely revised after extensive scientific investigations. The commission's revision is constant, and, as a consequence, only the latest edition is completely up to date. For that reason and on account of their detailed and essentially technical character, annexes A-G are not here reprinted. By title they are as follows:]

Annex A. The marking of aircraft and call signs.

Annex B. Certificates of airworthiness.

Annex C. Log books.

Annex D. Rules as to lights and signals. Rules for air traffic.

Annex E. Minimum qualifications necessary for obtaining certificates and licenses as pilots and navigators.

Annex F. International aeronautical maps and ground markings.

Annex G. Collection and dissemination of meteorological information.

Annex H. Customs

General Provisions

1. Any aircraft going abroad shall depart only from aerodromes specially designated by the customs administration of each contracting state, and named "customs aerodromes."

Aircraft coming from abroad shall land only in such aerodromes.

2. Every aircraft which passes from one state into another is obliged to cross the frontier between certain points fixed by the contracting states. These points are shown on the aeronautical maps.

3. All necessary information concerning customs' aerodromes within a state, including any alterations made to the list and any corresponding alterations necessary on the aeronautical maps and the dates when such alterations become valid, and all other information concerning any international aerodromes which may be established, shall be communicated by the *state* concerned *to* the International Commission for Air Navigation which shall notify such information to all of the contracting states. The contracting states may agree to establish international aerodromes at which there may be joint customs services for two or more states.

4. When, by reason of a case of *force majeure,* which must be duly justified, an aircraft crosses the frontier at any other point than those designated, it shall land at the nearest customs aerodrome on its route. If it is forced to land before reaching this aerodrome it shall inform the nearest police or customs authorities.

It will only be permitted to leave again with the authorization of these authorities, who shall, after verification, stamp the log book and the manifest provided for in par. 5; they shall inform the pilot of the customs aerodrome where he must necessarily carry out the formalities of customs clearance.

5. Before departure, or *immediately* after arrival, according to whether they are going to or coming back from a foreign country, pilots shall show their log books to the authorities of the aerodrome and, if necessary, the manifest of the goods and supplies for the journey which they carry.

6. The manifest is to be kept in conformity with the attached form No. 1.[1]

The goods must be the subject of detailed declarations in conformity with the attached form No. 2,[1] made out by the senders.

Every contracting state has the right to prescribe for the insertion either on the manifest or on the customs declaration of such supplementary entries as it may deem necessary.

7. In the case of an aircraft transporting goods the customs officer, before departure, shall examine the manifest and declarations, make the prescribed verifications and sign the log book as well as the manifest. He shall verify his signature with a

[1] Not here reproduced.

stamp. He shall seal the goods or sets of goods, for which such a formality is required.

On arrival the customs officer shall insure that the seal is unbroken, shall pass the goods, shall sign the log book and keep the manifest.

In the case of an aircraft with no goods on board, the log book only shall be signed by the police and customs officials.

The fuel on board shall not be liable to customs duties provided the quantity thereof does not exceed that needed for the journey, as defined in the log book.

8. As an exception to the general regulations, certain classes of aircraft, particularly postal aircraft, aircraft belonging to aerial transport companies regularly constituted and authorized and those belonging to members of recognized touring societies not engaged in the public conveyance of persons or goods, may be freed from the obligation of landing at a customs aerodrome and authorized to begin or end their journey at certain inland aerodromes appointed by the customs and police administration of each state at which customs formalities shall be complied with.

However, such aircraft shall follow the normal air route, and make their identity known by signals agreed upon as they fly across the frontier.

Regulations Applicable to Aircraft and Goods

9. Aircraft landing in foreign countries are in principle liable to customs duties if such exist.

If they are to be reexported, they shall have the benefit of the regulations as to permit by bond or deposit of the taxes.

In the case of the formation between two or more countries of *a* union of touring societies, the aircraft of the said countries will have the benefit of the regulations of the "Triptyque."

10. Goods arriving by aircraft shall be considered as coming from the country where the log book and manifest have been signed by the customs officer.

As regards their origin and the different customs régimes, they are liable to the regulations of the same kind as are applicable to goods imported by land or sea.

11. With regard to goods exported in discharge of a tem-

porary receiving or bonded account or liable to inland taxes, the senders shall prove their right to send the goods abroad by producing a certificate from the customs of the place of destination.

Air Transit

12. When an aircraft to reach its destination must fly over one or more contracting states, without prejudice to the right of sovereignty of each of the contracting states, two cases must be distinguished:—

1. If the aircraft neither sets down nor takes up passengers or goods, it is bound only to keep to the normal air route and make itself known by signals when passing over the points designated for such purpose.

2. In other cases, it shall be bound to land at a customs aerodrome and the name of such aerodrome shall be entered in the log book before departure. On landing, the customs authorities shall examine the papers and the cargo, and take, if need be, the necessary steps to insure the reexportation of the craft and goods or the payment of the dues.

The provisions of par. 9 (2) are applicable to goods to be reexported.

If the aircraft sets down or takes up goods the customs officer shall verify the fact on the manifest, duly completed, and shall affix, if necessary, a new seal.

Various Provisions

13. Every aircraft during flight, wherever it may be, must conform to the orders from police or customs stations and police or customs aircraft of the state over which it is flying.

14. Customs officers and excise officials, and generally speaking the representatives of the public authorities shall have free access to all starting and landing places for aircraft; they may also search any aircraft and its cargo to exercise their rights of supervision.

15. Except in the case of postal aircraft, all unloading or throwing out in the course of flight, except of ballast, may be prohibited.

16. In addition to any penalties which may be imposed by local law for infringement of the preceding regulations, such infringement shall be reported to the state in which the aircraft is registered and that state shall suspend for a limited time, or permanently, the certificate of registration of the offending aircraft.[1]

17. The provisions of this annex do not apply to military aircraft visiting a state by special authorization (Arts. 31, 32, and 33 of the convention), nor to police and custom aircraft (Arts. 31 and 34 of the convention).

2. PROTOCOL FOR AMENDING THE AIR CONVENTION OF 1919[2]

The International Commission for Air Navigation, in the course of its sixteenth session assembled in Paris under the presidency of Pierre-Etienne Flandin, assisted by Albert Roper, secretary-general, approved at its meeting of June 15, 1929, in conformity with the dispositions of Art. 34 of the convention relating to the regulation of air navigation, certain modifications [italicized] of Arts. 3, 5, 7, 15, 34, 37, 41 and 42, as well as of the final clauses of the aforesaid convention, which will read as follows, in . . . English . . . :

ART. 3. Each contracting state is entitled for military reasons or in the interest of public safety to prohibit the aircraft

[1] Resolution No. 18 (O. B. 1, p. 23).

See also:

Resolution No. 392 (O. B. 13, p. 46): Regulations concerning the international employment of symbols and terms used in aeronautical technics.

Resolution No. 188 (O. B. 7, p. 30): Regulations concerning emergency medical boxes on board aircraft.

Resolution No. 192 (O. B. 1, p. 34) and Resolution No. 266 (O. B. 9, p. 27): Regulations concerning an international standard atmosphere.

Resolution No. 325 (O. B. 11, p. 23): Investigation of aircraft accidents occurring abroad.

Resolution No. 462 (O. B. 15, p. 36): Unification of the methods of testing the light alloys.

Resolution No. 468 (O. B. 15, p. 39): Air traffic statistics.

Resolution No. 483 (O. B. 15, p. 48): Measures to be taken by ships at sea to enable aircraft to recognize their nationality.

[2] International Commission for Air Navigation: *Extraordinary Session of June 1929: Draft Minutes* (Paris, 1929), annex *n*. This protocol is in French with texts of the amendments in French, English and Italian. Only the English text is here given, the English of the protocol being from Great Britain, Parliamentary Papers, Miscellaneous No. 7 (1930), Cmd. 3541.

of the other contracting states, under the penalties provided by its legislation and subject to no distinction being made in this respect between its private aircraft and those of the other contracting states, from flying over certain areas of its territory.

Each contracting state may, as an exceptional measure and in the interest of public safety, authorize flight over the said areas by its national aircraft.

The *position* and extent of the prohibited areas shall be *previously* published and *shall be* notified, *as well as the exceptional authorizations issued under the last preceding paragraph,* to *all* the other contracting states *as well as to the International Commission for Air Navigation.*

Each contracting state reserves also the right in exceptional circumstances in time of peace and with immediate effect temporarily to restrict or prohibit flight over its territory or over part of its territory on condition that such restriction or prohibition shall be applicable without distinction of nationality to the aircraft of all the other states.

Such decision shall be published, notified to all the contracting states and communicated to the International Commission for Air Navigation.

ART. 5. (To be inserted as the last article of Chapter I.)

Each contracting state *is entitled to conclude special conventions* with *noncontracting states.*

The stipulation of such special *conventions shall* not infringe the rights of the contracting parties to the present convention.

Such special conventions in so far as may be consistent with their objects shall not be contradictory to the general principles of the present convention.

They shall be communicated to the International Commission for Air Navigation which will *notify them* to the other contracting states.

ART. 7. *The registration of aircraft referred to in the last preceding article shall be made in accordance with the laws and special provisions of each contracting state.*

ART. 15. Every aircraft of . . . . . (unchanged).

No aircraft of a contracting state capable of being flown without a pilot shall, except by special authorization, fly without a pilot over the territory of another contracting state.

Every aircraft which passes . . . . . (unchanged).

Every contracting state may make conditional on its prior authorization the establishment of international airways *and the creation and operation of regular international air navigation lines, with or without landing, on its territory.*

ART. 34. There shall be instituted, under the name of International Commission for Air Navigation, a permanent commission placed under the direction of the League of Nations.

Each contracting state may have not more than two representatives on the commission.

Each state represented . . . . . (unchanged).

The International Commission for Air Navigation shall determine the rules . . . . . (unchanged).

The duties of this commission shall be (*a-g*) (unchanged).

Any modification of the provisions of any one of the annexes may be made by the International Commission for Air Navigation when such modification shall have been approved by three-fourths *of the total votes of the states represented at the session and two-thirds* of the total possible votes which could be cast if all the states were represented. Such modification shall become effective . . . . . (unchanged).

Any proposed modification of the articles of the present convention . . . . . (unchanged).

All such modifications . . . . . (unchanged).

The expenses of the International Commission for Air Navigation shall be borne by the contracting states in *the* proportion *fixed by the said commission.*

The expenses occasioned . . . . . (unchanged).

ART. 37. (First paragraph.) In the case of a disagreement between two or more states relating to the interpretation of the present convention, the question in dispute shall be determined by the Permanent Court of International Justice. *Provided that, if one of the states concerned has not accepted the protocols relating to the Court, the question in dispute shall, on the demand of such state, be settled* by arbitration.

ART. 41. *Any state* shall be permitted to adhere to the present convention.

This adhesion shall be notified . . . . . (unchanged).

ART. 42. (Deleted.)

(FINAL CLAUSES.) In faith whereof the hereinafter named plenipotentiaries, whose powers have been found in good and due form, have signed the present convention.

The present convention has been drawn up in French, English and Italian.

In case of divergencies the French text shall prevail.

The undersigned, duly authorized, declare that they accept, in the name of the states they represent, the aforesaid modifications, which are proposed for final acceptance by the contracting states.

The present protocol shall remain open for signature by the states which are now contracting parties to the convention; it shall be ratified and the ratifications shall be deposited as soon as possible at the permanent seat of the commission.

It will come into force as soon as the states which are now contracting parties to the convention shall have effected the deposit of their ratifications.

States which may become contracting parties to the convention may adhere to the present protocol.

A certified true copy of the present protocol shall be transmitted by the Secretary-General to all the contracting states, as well as to the other states signatory to the convention relating to the regulation of air navigation.

Done at Paris, this fifteenth day of June, one thousand nine hundred and twenty-nine, in a single copy, which shall be deposited in the archives of the commission.

PIERRE-ETIENNE FLANDIN,
President of the Sixteenth Session of the C. I. N. A.

ALBERT ROPER
Secretary-General of the C. I. N. A.

Signed For:

BELGIUM
GREAT BRITAIN AND NORTHERN IRELAND
CANADA
AUSTRALIA
NEW ZEALAND
IRISH FREE STATE
INDIA
DENMARK
FRANCE
ITALY
PORTUGAL
TERRITORY OF THE SAAR.

3. PROTOCOL RELATING TO AMENDMENTS TO ARTS. 34 AND 40 OF THE CONVENTION RELATING TO THE REGULATION OF AIR NAVIGATION, DATED OCTOBER 13, 1919, SIGNED DECEMBER 11, 1929[1]

The International Commission for Air Navigation, composed of Representatives of those states who are parties to the convention, that is to say: Australia, Belgium, Bulgaria, Canada, Chile, Denmark, France, Great Britain and Northern Ireland, Greece, the Irish Free State, Italy, Japan, New Zealand, Panama, the Netherlands, Persia, Poland, Portugal, Rumania, the Territory of the Saar, Siam, Sweden, Czechoslovakia, the Union of South Africa, Uruguay, Yugoslavia, in the course of its seventeenth session assembled in Paris under the presidency of M. Alejandro Alvarez, Chilean delegate, assisted by Mr. Albert Roper, Secretary-General, at its meeting of December 11, 1929, and in conformity with the provisions of Art. 34 of the convention relating to the regulation of Air Navigation, approved certain modifications to Arts. 34 and 40 of the aforesaid convention.

I. Paragraph five of Art. 34, corresponding to paragraph three of Art. 34, as it appears in the protocol of June 15, 1929, relating to the amendments to Arts. 3, 5, 7, 15, 34, 37, 41, 42 and to the final clauses of the convention, shall read as follows, in French, in English and in Italian:—

Each state represented on the commission shall have one vote.

II. Paragraph one of Art. 40 shall be suppressed.

The undersigned, duly authorized, declare that they accept, in the name of the states they represent, the aforesaid modifications, which are proposed for final acceptance by the contracting states.

The present protocol shall remain open for signature by the states which are now contracting parties to the convention; it shall be ratified and the ratifications shall be deposited as soon as possible at the permanent seat of the commission.

It will come into force as soon as ratifications shall have been

[1] Protocols relating to Amendments to Arts. 3, 5, 7, 15, 34, 37, 40, 41 and 42 and to the Final Clauses of the Convention relating to the Regulation of Air Navigation of October 13, 1919, p. 13 (British Parl. Pap. Miscellaneous No. 7 (1930) Cmd. 3541).

deposited in the name of all the states which are now contracting parties to the convention.

States which may become contracting parties to the convention may adhere to the present protocol.

A certified true copy of the present protocol shall be transmitted by the Secretary-General to all the contracting states, as well as to the other states signatory to the convention relating to the regulation of air navigation.

Done at Paris, this eleventh day of December, one thousand nine hundred and twenty-nine, in a single copy, which shall be deposited in the archives of the commission.

ALEJANDRO ALVAREZ,
President of the Seventeenth Session of the C. I. N. A.

ALBERT ROPER
Secretary-General of the C. I. N. A.

Signed For:

AUSTRALIA
CANADA
CHILE
DENMARK
FRANCE
GREAT BRITAIN AND NORTHERN IRELAND
INDIA
IRISH FREE STATE
ITALY
NEW ZEALAND
PORTUGAL
TERRITORY OF THE SAAR
UNION OF SOUTH AFRICA

APPENDIX II

PAN AMERICAN CONVENTION ON COMMERCIAL AVIATION, SIGNED AT HABANA, FEBRUARY 15, 1928.[1]

[Not in force June 1, 1930.]

The Governments of the American Republics, desirous of establishing the rules they should observe among themselves for aerial traffic, have decided to lay them down in a convention, and to that effect have appointed as their plenipotentiaries:

[Peru, Uruguay, Panama,[2] Ecuador, Mexico,[2] Salvador, Guatemala,[2] Nicaragua,[2] Bolivia, Venezuela, Colombia, Honduras, Costa Rica, Chile, Brazil, Argentina, Paraguay, Haiti, Dominican Republic, United States of America, Cuba]

Who, after having exchanged their respective full powers, which have been found to be in good and due form, have agreed upon the following:

ART. I. The high contracting parties recognize that every state has complete and exclusive sovereignty over the air space above its territory and territorial waters.

ART. II. The present convention applies exclusively to private aircraft.

ART. III. The following shall be deemed to be state aircraft:

(*a*) Military and naval aircraft;

(*b*) Aircraft exclusively employed in state service, such as posts, customs, police.

Every other aircraft shall be deemed to be a private aircraft.

All state aircraft other than military, naval, customs and police aircraft shall be treated as private aircraft and as such shall be subject to all the provisions of the present convention.

[1] *Sixth International Conference of American States: Final Act: Motions, Agreements, Resolutions and Conventions*, p. 97-109. (Habana, Imprenta y Papeleria de Rambla, Bouza y Ca.); *American Journal of International Law*, XXII, Supplement, p. 124.

[2] Ratification deposited with the Government of Cuba (*Bulletin of the Pan American Union*, LXIV, p. 237).

ART. IV. Each contracting state undertakes in time of peace to accord freedom of innocent passage above its territory to the private aircraft of the other contracting states, provided that the conditions laid down in the present convention are observed. The regulations established by a contracting state with regard to admission over its territory of aircraft of other contracting states shall be applied without distinction of nationality.

ART. V. Each contracting state has the right to prohibit, for reasons which it deems convenient in the public interest, the flight over fixed zones of its territory by the aircraft of the other contracting states and privately owned national aircraft employed in the service of international commercial aviation, with the reservation that no distinction shall be made in this respect between its own private aircraft engaged in international commerce and those of the other contracting states likewise engaged. Each contracting state may furthermore prescribe the route to be followed over its territory by the aircraft of the other states, except in cases of *force majeure* which shall be governed in accordance with the stipulations of Art. XVIII of this convention. Each state shall publish in advance and notify the other contracting states of the fixation of the authorized routes and the situation and extension of the prohibited zones.

ART. VI. Every aircraft over a prohibited area shall be obliged, as soon as this fact is realized or upon being so notified by the signals agreed upon, to land as soon as possible outside of said area in the airdrome nearest the prohibited area over which it was improperly flying and which is considered as an international airport by the subjacent state.

ART. VII. Aircraft shall have the nationality of the state in which they are registered and can not be validly registered in more than one state.

The registration entry and the certificate of registration shall contain a description of the aircraft, and state the number or other mark of identification given by the constructor of the machine, the registry marks and nationality, the name of the airdrome or airport usually used by the aircraft, and the full name, nationality and domicile of the owner, as well as the date of registration.

ART. VIII. The registration of aircraft referred to in the

preceding article shall be made in accordance with the laws and special provisions of each contracting state.

ART. IX. Every aircraft engaged in international navigation must carry a distinctive mark of its nationality, the nature of such distinctive mark to be agreed upon by the several contracting states. The distinctive marks adopted will be communicated to the Pan American Union and to the other contracting states.

ART. X. Every aircraft engaged in international navigation shall carry with it in the custody of the aircraft commander:

(*a*) A certificate of registration, duly certified to according to the laws of the state in which it is registered;

(*b*) A certificate of airworthiness, as provided for in Art. XII;

(*c*) The certificates of competency of the commander, pilots, engineers, and crew, as provided for in Art. XIII;

(*d*) If carrying passengers, a list of their names, addresses and nationality;

(*e*) If carrying merchandise, the bills of lading and manifests, and all other documents required by customs laws and regulations of each country;

(*f*) Log books;

(*g*) If equipped with radiotelegraph apparatus, the corresponding license.

ART. XI. Each contracting state shall every month file with every other state party to this convention and with the Pan American Union, a copy of all registrations and cancellations of registrations of aircraft engaged in international navigation as between the several contracting states.

ART. XII. Every aircraft engaged in international navigation (between the several contracting states) shall be provided with a certificate of airworthiness issued by the state whose nationality it possesses.

This document shall certify to the states in which the aircraft is to operate, that, according to the opinion of the authority that issues it, such aircraft complies with the airworthiness requirements of each of the states named in said certificate.

The aircraft commander shall at all times hold the certificate in his custody and shall deliver it for inspection and verification to the authorized representatives of the state which said aircraft visits.

Each contracting state shall communicate to the other states parties to this convention and to the Pan American Union its regulations governing the rating of its aircraft as to airworthiness and shall similarly communicate any changes made therein.

While the states affirm the principle that the aircraft of each contracting state shall have the liberty of engaging in air commerce with the other contracting states without being subjected to the licensing system of any state with which such commerce is carried on, each and every contracting state mentioned in the certificate of airworthiness reserves the right to refuse to recognize as valid the certificate of airworthiness of any foreign aircraft where inspection by a duly authorized commission of such state shows that the aircraft is not, at the time of inspection, reasonably airworthy in accordance with the normal requirements of the laws and regulations of such state concerning the public safety.

In such cases said state may refuse to permit further transit by the aircraft through its air space until such time as it, with due regard to the public safety, is satisfied as to the airworthiness of the aircraft, and shall immediately notify the state whose nationality the aircraft possesses and the Pan American Union of the action taken.

ART. XIII. The aircraft commander, pilots, engineers and other members of the operating crew of every aircraft engaged in international navigation between the several contracting states shall, in accordance with the laws of each state, be provided with a certificate of competency by the contracting state whose nationality the aircraft possesses.

Such certificate or certificates shall set forth that each pilot, in addition to having fulfilled the requirements of the state issuing the same, has passed a satisfactory examination with regard to the traffic rules existing in the other contracting states over which he desires to fly. The requirements of form of said documents shall be uniform throughout all the contracting states and shall be drafted in the language of all of them, and for this purpose the Pan American Union is charged with making the necessary arrangements among the contracting states.

Such certificate or certificates shall be held in the possession of the aircraft commander as long as the pilots, engineers and other members of the operating crew concerned continue to be

employed on the aircraft. Upon the return of such certificate an authenticated copy thereof shall be retained in the files of the aircraft.

Such certificate or certificates shall be open at all times to the inspection of the duly authorized representatives of any state visited.

Each contracting state shall communicate to the other states parties to this convention and to the Pan American Union its regulations governing the issuance of such certificates and shall from time to time communicate any changes made therein.

ART. XIV. Each and every contracting state shall recognize as valid, certificates of competency of the aircraft commander, pilots, engineers and other members of the operating crew of an aircraft, issued in accordance with the laws and regulations of other contracting states.

ART. XV. The carriage by aircraft of explosives, arms and munitions of war is prohibited in international aerial navigation. Therefore, no foreign or native aircraft authorized for international traffic shall be permitted to transport articles of this nature, either between points situated within the territory of any of the contracting states or through the same, even though simply in transit.

ART. XVI. Each state may prohibit or regulate the carriage or use, by aircraft possessing the nationality of other contracting states, of photographic apparatus. Such regulations as may be adopted by each state concerning this matter shall be communicated to each other contracting state and to the Pan American Union.

ART. XVII. As a measure of public safety or because of lawful prohibitions, the transportation of articles in international navigation other than those mentioned in Arts. XV and XVI may be restricted by any contracting states. Such restrictions shall be immediately communicated to the other contracting states and to the Pan American Union.

All restrictions mentioned in this article shall apply equally to foreign and national aircraft employed in international traffic.

ART. XVIII. Every aircraft engaged in international traffic which enters the air space of a contracting state with the intention of landing in said state shall do so in the corresponding

customs airdrome, except in the cases mentioned in Art. XIX and in case of *force majeure,* which must be proved.

Every aircraft engaged in international navigation, prior to its departure from the territorial jurisdiction of a contracting state in which it has landed, shall obtain such clearance as is required by the laws of such state at a port designated as point of departure by such state.

Each and every contracting state shall notify every other state party to this convention and the Pan American Union of such airports as shall be designated by such state as ports of entry and departure.

When the laws or regulations of any contracting state so require, no aircraft shall legally enter into or depart from its territory through places other than those previously authorized by such state as international airports, and the landing therein shall be obligatory unless a special permit, which has been previously communicated to the authorities of said airport, is obtained from the competent authorities of said state, in which permit shall be clearly expressed the distinctive marks which the aircraft is obliged to make visible whenever requested to do so in the manner previously agreed upon in said permit.

In the event that for any reason, after entering the territorial jurisdiction of a contracting state, aircraft of another contracting state should land at a point other than an airport designated as a port of entry in that state, the aircraft commander shall immediately notify the nearest competent authority and hold himself, crew, passengers and cargo at the point of landing until proper entry has been granted by such competent authority, unless communication therewith is impracticable within 24 hours.

Aircraft of one of the contracting states which flies over the territory of another contracting state shall be obliged to land as soon as ordered to do so by means of the regulation signals, when for any reason this may be necessary.

In the cases provided for in this article, the aircraft, aircraft commander, crew, passengers and cargo shall be subject to such immigration, emigration, customs, police, quarantine or sanitary inspection as the duly authorized representatives of the subjacent state may make in accordance with its laws.

ART. XIX. As an exception to the general rules, postal aircraft and aircraft belonging to aerial transport companies regularly constituted and authorized may be exempted, at the option of the subjacent state, from the obligation of landing at an airdrome designated as a port of entry and authorized to land at certain inland airdromes, designated by the customs and police administration of such state, at which customs formalities shall be complied with. The departure of such aircraft from the state visited may be regulated in a similar manner.

However, such aircraft shall follow the normal air route, and make their identity known by signals agreed upon as they fly across the frontier.

ART. XX. From the time of landing of a foreign aircraft at any point whatever until its departure, the authorities of the state visited shall have, in all cases, the right to visit and examine the aircraft and to verify all documents with which it must be provided, in order to determine that all the laws, rules, and regulations of such states and all of the provisions of this convention are complied with.

ART. XXI. The aircraft of a contracting state engaged in international air commerce shall be permitted to discharge passengers and a part of its cargo at one of the airports designated as a port of entry of any other contracting state, and to proceed to any other airport or airports in such state for the purpose of discharging the remaining passengers and portions of such cargo and in like manner to take on passengers and load cargo destined for a foreign state or states, provided that they comply with the legal requirements of the country over which they fly, which legal requirements shall be the same for native and foreign aircraft engaged in international traffic and shall be communicated in due course to the contracting states and to the Pan American Union.

ART. XXII. Each contracting state shall have the right to establish reservations and restrictions in favor of its own national aircraft in regard to the commercial transportation of passengers and merchandise between two or more points in its territory, and to other remunerated aeronautical operations wholly within its territory. Such reservations and restrictions shall be immediately published and communicated to the other contracting states and to the Pan American Union.

ART. XXIII. The establishment and operation of airdromes will be regulated by the legislation of each country, equality of treatment being observed.

ART. XXIV. The aircraft of one contracting state engaged in international commerce with another contracting state shall not be compelled to pay other or higher charges in airports or airdromes open to the public than would be paid by national aircraft of the state visited, likewise engaged in international commerce.

ART. XXV. So long as a contracting state shall not have established appropriate regulations, the commander of an aircraft shall have rights and duties analogous to those of the captain of a merchant steamer, according to the respective laws of each state.

ART. XXVI. The salvage of aircraft lost at sea shall be regulated, in the absence of any agreement to the contrary, by the principles of maritime law.

ART. XXVII. The aircraft of all states shall have the right, in cases of danger, to all possible aid.

ART. XXVIII. Reparations for damages caused to persons or property located in the subjacent territory shall be governed by the laws of each state.

ART. XXIX. In case of war the stipulations of the present convention shall not affect the freedom of action of the contracting states either as belligerents or as neutrals.

ART. XXX. The right of any of the contracting states to enter into any convention or special agreement with any other state or states concerning international aerial navigation is recognized, so long as such convention or special agreement shall not impair the rights or obligations of any of the states parties to this convention, acquired or imposed therein: provided, however, that two or more states, for reasons of reciprocal convenience and interest may agree upon appropriate regulations pertaining to the operation of aircraft and the fixing of specified routes. These regulations shall in no case prevent the establishment and operation of practicable inter-American aerial lines and terminals. These regulations shall guarantee equality of treatment of the aircraft of each and every one of the contracting states and shall be subject to the same conditions as are set

forth in Art. V of this convention with respect to prohibited areas within the territory of a particular state.

Nothing contained in this convention shall affect the rights and obligations established by existing treaties.

ART. XXXI. The contracting states obligate themselves in so far as possible to cooperate in inter-American measures relative to:

(*a*) The centralization and distribution of meteorological information, whether statistical, current or special;

(*b*) The publication of uniform aeronautical charts, as well as the establishment of a uniform system of signals;

(*c*) The use of radiotelegraphy in aerial navigation, the establishment of the necessary radiotelegraph stations and the observance of the inter-American and international radiotelegraph regulations or conventions at present existing or which may come into existence.

ART. XXXII. The contracting states shall procure as far as possible uniformity of laws and regulations governing aerial navigation. The Pan American Union shall cooperate with the Governments of the contracting states to attain the desired uniformity of laws and regulations for aerial navigation in the states parties to this convention.

Each contracting state shall exchange with every other contracting state within three months after the date of ratification of this convention copies of its air traffic rules and requirements as to competency for aircraft commanders, pilots, engineers and other members of the operating crew, and the requirements for airworthiness of aircraft intended to engage in international commerce.

Each contracting state shall deposit with every other state party to this convention and with the Pan American Union three months prior to the date proposed for their enforcement any additions to or amendments of the regulations referred to in the last preceding paragraph.

ART. XXXIII. Each contracting state shall deposit its ratification with the Cuban Government, which shall thereupon inform the other contracting states. Such ratification shall remain deposited in the archives of the Cuban Government.

ART. XXXIV. The present convention will come into force for each signatory state ratifying it in respect to other states

which have already ratified, 40 days from the date of deposit of its ratification.

ART. XXXV. Any state may adhere to this convention by giving notice thereof to the Cuban Government, and such adherence shall be effective 40 days thereafter. The Cuban Government shall inform the other signatory states of such adherence.

ART. XXXVI. In case of disagreement between two contracting states regarding the interpretation or execution of the present convention the question shall, on the request of one of the Governments in disagreement, be submitted to arbitration as hereinafter provided. Each of the Governments involved in the disagreement shall choose another Government not interested in the question at issue and the Government so chosen shall arbitrate the dispute. In the event the two arbitrators can not reach an agreement, they shall appoint another disinterested Government as additional arbitrator. If the two arbitrators can not agree upon the choice of this third Government, each arbitrator shall propose a Government not interested in the dispute and lots shall be drawn between the two Governments proposed. The drawing shall devolve upon the Governing Board of the Pan American Union.

The decision of the arbitrators shall be by majority vote.

ART. XXXVII. Any contracting state may denounce this convention at any time by transmitting notification thereof to the Cuban Government, which shall communicate it to the other states parties to this convention. Such denunciation shall not take effect until six months after notification thereof to the Cuban Government, and shall take effect only with respect to the state making the denunciation.

In witness whereof, the above-named plenipotentiaries have signed this convention and the seal of the Sixth International Conference of American states has been hereto affixed.

RESERVATION OF THE DOMINICAN REPUBLIC

The Delegation of the Dominican Republic records, as an explanation of its vote, that upon signing the present convention it does not understand that the Dominican Republic dissociates itself from conventions it has already ratified and which are in force.

APPENDIX III

CONVENTION FOR UNIFICATION OF CERTAIN RULES RELATIVE TO INTERNATIONAL AIR TRANSPORTATION, SIGNED AT WARSAW, OCTOBER 12, 1929[1]

[Translation[2]]

[Not in force July 1, 1930.]

The President of the German Reich, the Federal President of the Republic of Austria, His Majesty the King of the Belgians, the President of the United States of Brazil, His Majesty the King of the Bulgarians, the President of the Nationalist Government of the Republic of China, His Majesty the King of Denmark and Iceland, His Majesty the King of Egypt, His Majesty the King of Spain, the Chief of State of the Republic of Estonia, the President of the Republic of Finland, the President of the French Republic, His Majesty the King of Great Britain, Ireland and the British Territories beyond the Seas, Emperor of India, the President of the Hellenic Republic, His Most Serene Highness the Regent of the Kingdom of Hungary, His Majesty the King of Italy, His Majesty the Emperor of Japan, the President of the Republic of Latvia, Her Royal Highness the Grand Duchess of Luxemburg, the President of the United Mexican States, His Majesty the King of Norway, Her Majesty the Queen of the Netherlands, the President of the Republic of Poland, His Majesty the King of Rumania, His Majesty the King of Sweden, the Swiss Federal Council, the President of the Czechoslovak Republic, the Central Executive Committee of the Union of Socialist Soviet Republics, the President of the United States of Venezuela, His Majesty the King of Yugoslavia,

[1] French text in *Convention pour l'unification de certaines règles relatives au transport aérien international, protocole additionnel et protocole final adoptés par la IIe. Conférence internationale de droit privé aérien réunie à Varsovie du 4 au 12 Octobre 1929* (Paris, Publication du Comité international technique d'experts juridiques aériens, 1930); French text in *Droit aérien*, XIII, p. 646.

[2] Reprinted from United States Department of State, *Bulletin of Treaty Information*, No. 7, September, 1929, *Supplement*.

having recognized the utility of regulating in a uniform manner the conditions of international transportation by air with respect to the documents employed for such transportation and the liability of the carrier,

have for this purpose appointed their respective plenipotentiaries who, duly authorized, have concluded and signed the following convention:

Chapter I. Subject—Definitions

Article 1. (1) The present convention applies to any international transportation of persons, baggage or merchandise effected by aircraft for compensation. It likewise applies to gratuitous transportations effected by aircraft by an aerial transportation enterprise.

(2) The name of "international transportation," in the meaning of the present convention, is given to any transportation in which, according to the stipulations of the parties, the point of departure and the point of destination, whether or not there is an interruption to the transportation or transshipment, are located either on the territory of two high contracting parties, or on the territory of a single high contracting party, if a stop is contemplated in a territory subject to the sovereignty, suzerainty, mandate or authority of another power, even a non-contracting power. Transportation without such a stop between the territories subject to the sovereignty, suzerainty, mandate or authority of the same high contracting party is not considered international in the meaning of the present convention.

(3) Transportation to be effected by several successive aerial carriers is deemed to constitute a single transportation for the application of this convention when it has been considered by the parties as a single operation, when it was concluded under the form of a single contract or a series of contracts and it does not lose its international character by the fact that a single contract or a series of contracts must be wholly executed in a territory subject to the sovereignty, suzerainty, mandate or authority of one high contracting party.

Art. 2. (1) The convention applies to transportations effected by the state or other juridical persons in public law, under the conditions provided in Art. 1.

(2) Transportations effected under the rule of international postal conventions are excepted from the application of the present convention.

Chapter II. Transportation Documents

Section I. Passage Ticket

Art. 3. (1) In the transportation of travelers, the carrier is required to deliver a ticket which must bear the following data:

(*a*) the place and date of issue;

(*b*) the points of departure and of destination;

(*c*) the stops contemplated, subject to the carrier's right of stipulating that he may change them in case of necessity; but such change may not cause the transportation to lose its international character;

(*d*) the name and address of the carrier or carriers;

(*e*) mention that the transportation is subject to the régime of liability established by the present convention.

(2) The absence, irregularity or loss of the ticket does not affect either the existence or the validity of the transportation contract, which shall be no less subject to the rules of the present convention. However, if the carrier accepts the passenger without his having been delivered a passage ticket, he shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability.

Section II. Baggage Check

Art. 4. (1) For the transportation of baggage, other than small personal objects which the traveler keeps in his possession, the carrier is required to deliver a baggage check.

(2) The baggage check is made out in duplicate, one copy for the traveler, the other for the carrier.

(3) It must contain the following data:

(*a*) the place and date of issue;

(*b*) the points of departure and of destination;

(*c*) the name and address of the carrier or carriers;

(*d*) the number of the passage ticket;

(*e*) indication that baggage is delivered to the bearer of the check;

(*f*) number and weight of packages;

(*g*) amount of the value declared in accordance with Art. 22, par. 2;

(*h*) mention that the transportation is subject to the régime of liability established by the present convention.

(4) The absence, irregularity or loss of the check does not affect either the existence or the validity of the transportation contract, which shall be no less subject to the rules of the present convention. However, if the carrier accepts baggage without a check having been delivered or if the check does not contain the data mentioned under (*d*), (*f*), (*h*), the carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability.

Section III. Aerial Way-Bill

Art. 5. (1) Any carrier of merchandise has the right to demand that the shipper draw up and deliver a document styled: "aerial way-bill"; every shipper has the right to demand that the carrier accept such document.

(2) However, the absence, irregularity or loss of this document does not affect either the existence or the validity of the transportation contract which shall be no less subject to the rules of the present convention, reservation being made of the provisions of Art. 9.

Art. 6. (1) The aerial way-bill is made out by the shipper in three original copies and delivered with the merchandise.

(2) The first copy bears the notation, "for the carrier"; it is signed by the shipper. The second copy bears the notation, "for the consignee"; it is signed by the shipper and the carrier and it accompanies the merchandise. The third copy is signed by the carrier and delivered by him to the shipper after the merchandise has been accepted.

(3) The signature of the carrier must be affixed immediately upon acceptance of the merchandise.

(4) The signature of the carrier may be replaced by a stamp; that of the shipper may be printed or replaced by a stamp.

(5) If, at the demand of the shipper, the carrier draws up the aerial way-bill, he is considered to be acting for the account of the shipper, until proof to the contrary is shown.

Art. 7. The carrier of merchandise has the right to demand

that the shipper make out different aerial way-bills where there are several parcels.

ART. 8. The aerial way-bill must contain the following data:

(*a*) the place where the document originated and the date on which it was made out;

(*b*) the points of departure and of destination;

(*c*) the stops contemplated, subject to the carrier's right of stipulating that he may change them in case of necessity; but such change may not cause the transportation to lose its international character;

(*d*) the name and address of the shipper;

(*e*) the name and address of the first carrier;

(*f*) the name and address of the consignee, if any;

(*g*) the nature of the merchandise;

(*h*) the number, manner of packing, special marks or numbers of the packages;

(*i*) the weight, quantity, bulk or dimensions of the merchandise;

(*j*) the apparent condition of the merchandise and of the packing;

(*k*) the cost of transportation if it is stipulated, the date and place of payment and the person who should pay;

(*l*) the cost of the merchandise and the amount of charges, if any, if the shipment is made C.O.D.;

(*m*) the amount of the value declared in conformity with Art. 22, par. 2;

(*n*) the number of copies of the aerial way-bill;

(*o*) the documents forwarded to the carrier to accompany the aerial way-bill;

(*p*) the period of time in which the transportation is to be effected and a brief indication of the route to be followed (*via*), if they have been stipulated:

(*q*) mention that the transportation is subject to the régime of liability established by the present convention.

ART. 9. If the carrier accepts merchandise without an aerial way-bill having been drawn up, or if this bill does not contain all the data indicated by Art. 8 [(*a*) to (*i*) inclusive and (*q*)], the carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability.

ART. 10. (1) The shipper is responsible for the accuracy of the information and declarations concerning the merchandise

which he enters on the aerial way-bill.

(2) He shall be responsible for any injury suffered by the carrier or any other person on account of his information and declarations being irregular, inaccurate or incomplete.

ART. 11. (1) The aerial way-bill is evidence, until proof to the contrary is adduced, of the conclusion of the contract, of the receipt of the merchandise and of the terms of transportation.

(2) The statements in the aerial way-bill relative to the weight, size and packing of the merchandise, and also the number of packages are evidence, until proof to the contrary is adduced; those relative to quantity, bulk and the condition of the merchandise are evidence against the carrier only in so far as verification thereof has been made by him in the presence of the shipper, and stated on the aerial way-bill, or in so far as statements relative to the apparent condition of the merchandise are concerned.

ART. 12. (1) The shipper has the right, on condition that he fulfills all the obligations resulting from the transportation contract, to dispose of the merchandise, either by withdrawing it from the airdromes of departure or of destination, or by stopping it on the way at a landing point, or by having it delivered at the place of destination or on the way to a person other than the consignee indicated on the aerial way-bill, or by requesting its return to the airdrome of departure, in so far as the exercise of that right does not prove injurious to either the carrier or to the other shippers, and under the obligation of repaying all expenses incurred thereby.

(2) In case it is impossible to execute the orders of the shipper, the carrier must so notify him immediately.

(3) If the carrier complies with the orders of the shipper as to the disposal of the merchandise without requiring that a copy of the aerial way-bill delivered to the latter be produced, he shall be responsible, with recourse against the shipper, for the injury which might be caused thereby to the person regularly in possession of the aerial way-bill.

(4) The right of the shipper ceases from the moment when that of the consignee begins, in conformity with Art. 13 hereinbelow. However, if the consignee refuses the way-bill or the merchandise, or if he can not be reached, the shipper reassumes his right of disposal.

ART. 13. (1) Except in the cases named in the foregoing article, the consignee has the right, immediately upon the arrival of the merchandise at the point of destination, to demand that the carrier shall deliver to him the aerial way-bill and the merchandise upon payment of the amount of the money owing and upon fulfillment of the conditions of transportation indicated in the aerial way-bill.

(2) Except in the case of a stipulation to the contrary, the carrier must notify the consignee immediately upon the arrival of the merchandise.

(3) If the carrier acknowledges the loss of the merchandise or if, at the expiration of a period of seven days after it should have arrived, the merchandise has not arrived, the consignee is authorized to invoke against the carrier the rights resulting from the transportation contract.

ART. 14. The shipper and the consignee may invoke all the rights which are conferred on them respectively by Arts. 12 and 13, each in his own name, when it concerns their own interests or the interests of others, provided that they fulfill the obligations imposed by the contract.

ART. 15. (1) Arts. 12, 13, and 14 in no wise impair either the relations of the shipper and consignee to each other nor the relations of third parties whose rights are derived either from the carrier or the consignee.

(2) Any clause departing from the stipulations of Arts. 12, 13 and 14 must be entered in the aerial way-bill.

ART. 16. (1) The shipper is required to supply the information and attach to the aerial way-bill all documents which are needed, before the delivery of the merchandise to the consignee, for the fulfillment of customs, octroi or police formalities. The shipper is responsible to the carrier for all damages which might result from the absence, inadequacy or irregularity of such information and documents, except when the carrier or his agents are at fault.

(2) The carrier is not required to ascertain whether the said information and documents are correct or adequate.

CHAPTER III. LIABILITY OF THE CARRIER

ART. 17. The carrier is liable for any damage occurring in case of death, wounds or any other bodily injury suffered by

a traveler when the accident which occasioned the damage occurred on board the aircraft or during any operations in connection with embarkation or landing.

ART. 18. (1) The carrier is liable for damage having occurred in case of destruction, loss or damage to checked baggage or merchandise when the event which occasioned the damage took place during the transportation by air.

(2) Transportation by air, in the meaning of the preceding paragraph, includes the period during which baggage or merchandise are in the custody of the carrier, whether in an airdrome or on board an aircraft or in any place whatever in case a landing is made outside an airdrome.

(3) The period of transportation by air does not cover any transportation by land, sea or river effected outside an airdrome. However, when such transportation is effected in the execution of the aerial transportation contract because of loading, delivery or transshipment, any damage is, except on proof to the contrary, presumed to result from an event taking place during the transportation by air.

ART. 19. The carrier is liable for damage resulting from a delay in the transportation by air of travelers, baggage or merchandise.

ART. 20. (1) The carrier is not liable if he proves that he and his agents have taken reasonable measures to prevent the damage, or that it was impossible to take such measures.

(2) In the transportation of merchandise and baggage, the carrier is not liable if he proves that the damage arises from a fault of piloting, of handling the aircraft, or of navigation, and that, in all other regards, he and his agents have taken all necessary measures to prevent the damage.

ART. 21. (1) In case the carrier proves that the fault of the injured person caused the damage or contributed to it, the court may, in accordance with the provisions of its own law, set aside or extenuate the liability of the carrier.

ART. 22. (1) In the transportation of persons, the liability of the carrier toward each passenger is limited to the sum of 125,000 francs. In case, according to the law of the court before which the case is brought, the indemnity may be fixed under the form of an income, the capital of the income may not exceed this limit. However, the traveler may, by a special agreement with the carrier, set a higher limit of liability.

(2) In the transportation of checked baggage and of merchandise, the liability of the carrier is limited to the sum of 250 francs per kilogram, except in the case of a special declaration of interest in delivery made by the shipper at the time the package is turned over to the carrier, and upon the payment of a possible additional charge. In that case, the carrier is required to pay up to the amount that has been declared, unless he proves that it is higher than the actual interest of the shipper in the delivery.

(3) With respect to articles kept in the passenger's possession, the liability of the carrier is limited to 5,000 francs per traveler.

(4) The amounts mentioned above are considered to refer to the French franc, composed of 65.5 milligrams of gold at the standard of nine hundred thousandths of pure metal. They may be converted into any national currency in round numbers.

ART. 23. Any clause tending to release the carrier from his liability or to set a limit lower than that fixed in the present convention is null and void, but the nullity of that clause does not entail the nullity of the contract which remains subject to the provisions of the present convention.

ART. 24. (1) In the cases contemplated in Arts. 18 and 19, any action for damages, on any grounds whatever, may be brought only under the conditions and within the limits provided by the present convention.

(2) In the cases contemplated in Art. 17, the provisions of the above paragraph also apply, without prejudice to the determination of the persons who are entitled to act and their respective rights.

ART. 25. (1) The carrier shall not be entitled to avail himself of the provisions of the present convention which exclude or limit his liability, if the damage arises from deception on his part or from a fault which, according to the law of the court before which the case is brought, is considered equivalent to deception.

(2) He shall also be denied this right if the damage was caused under the same circumstances by one of his agents in the performance of his duties.

ART. 26. (1) When merchandise and baggage are received by the consignee without protest, that shall constitute a presumption, unless proof to the contrary is adduced, that the

merchandise was delivered in good condition and in accordance with the transportation voucher.

(2) In case of damage the consignee must send a protest to the carrier immediately after discovery of the damage and, at the latest, within a period of three days for baggage and seven days for merchandise from the date of their receipt. In case of delay, the protest must be made not later than 14 days after the date on which the baggage or merchandise shall have been placed at his disposal.

(3) All protests must be made through reservations entered on the voucher or by another document issued within the period provided for such protests.

(4) In the absence of a protest within the periods provided, all actions against the carrier are inadmissible, except in the case of fraud of the latter.

ART. 27. In case of the debtor's death, the action for damages, within the limits provided by the present convention, is prosecuted against the parties who, because of their connection with the debtor, may be concerned *(ayants droit)*.

ART. 28. (1) Action for damages must be brought, as the plaintiff may elect, in the territory of one of the high contracting parties, either before the court of the domicile of the carrier, of the registered office of the concern, or of the place where it has an establishment through which the contract was concluded, or before the court of the place of destination.

(2) Procedure shall be regulated by the law of the court before which the case is brought.

ART. 29. (1) Action for damages must be instituted within a period of two years, counting from the date of the arrival of the aircraft at its destination or the date when it should have arrived, or the date when the transportation ceased, or it will be outlawed.

(2) The method of estimating the period is determined by the law of the court before which the case is brought.

ART. 30. (1) In the case of transportation governed by the definition in the third paragraph of Art. 1, to be accomplished by various successive carriers, each carrier accepting passengers, baggage or merchandise is subject to the rules established by this convention, and is considered to be one of the contracting parties of the transportation contract, in so far as

this contract touches upon the part of the transportation effected under his supervision.

(2) In the case of such transportation, the passenger or his *ayants droit* can have recourse only against the carrier who effected the transportation during which the accident or delay occurred, except in the case when the first carrier, by an express stipulation, shall have assumed responsibility for the whole trip.

(3) In the case of baggage or merchandise, the shipper shall have recourse against the first carrier and the consignee who is entitled to delivery against the last, and both may, in addition, bring action against the carrier who effected the transportation in the course of which the destruction, loss, damage or delay occurred. These carriers shall be jointly liable to the shipper and the consignee.

Chapter IV. Provisions Relative to Combined Transportations

Art. 31. (1) In case of combined transportations effected partly by air and partly by any other means of transportation, the stipulations of the present convention apply only to the transportation by air and if the latter comes within the conditions of Art. 1.

(2) Nothing in the present convention prevents the parties from inserting in the air transportation voucher, in the case of combined transportations, conditions relative to other means of transportation, on condition that the stipulations of the present convention are respected with regard to transportation by air.

Chapter V. General and Final Provisions

Art. 32. (1) All clauses of the transportation contract, and all private agreements entered into prior to the damage by which the parties might depart from the rules of this convention, either through a determination of the law applicable to the case or through a modification in the rules of the jurisdiction, are null and void. In the transportation of merchandise, however, arbitration clauses are permitted, within the limits of the present convention, when arbitration is to be effected in the places of competence of the courts contemplated in Art. 28, par. 1.

ART. 33. Nothing in the present convention may prevent a carrier from refusing to conclude a transportation contract or from formulating regulations which are not contradictory to the provisions of the present convention.

ART. 34. The present convention is not applicable to international aerial transportation made as first attempts by air navigation enterprises with a view to establishing regular air navigation lines or to transportations effected under extraordinary circumstances outside any normal operation of aerial exploitation.

ART. 35. When the present convention considers days, it means successive days and not working days.

ART. 36. The present convention is drafted in French, in a single copy which shall remain in the archives of the Ministry of Foreign Affairs of Poland, and an authenticated copy of which shall be transmitted by the Polish Government to the Government of each of the high contracting parties.

ART. 37. (1) The present convention shall be ratified. The instruments of ratification shall be deposited in the archives of the Ministry of Foreign Affairs of Poland, which shall notify the Government of each of the high contracting parties of the deposit thereof.

(2) As soon as the present convention shall have been ratified by five of the high contracting parties, it shall become effective between them the 90th day after the deposit of the fifth ratification. Subsequently, it shall become effective between the high contracting parties which shall have ratified it and the high contracting party which shall deposit its instrument of ratification on the 90th day after its deposit.

(3) It shall devolve upon the Government of the Republic of Poland to notify the Government of each of the high contracting parties of the date on which the present convention becomes effective as well as the date of deposit of each ratification.

ART. 38. (1) After it becomes effective, the present convention shall be open to adherence by all states.

(2) Adherence shall be effected by a notification addressed to the Government of the Republic of Poland, which shall inform the Government of each of the high contracting parties thereof.

(3) Adherence shall take effect from the 90th day after notification has been given the Government of the Republic of Poland.

ART. 39. (1) Each of the high contracting parties may denounce the present convention by notifying the Government of the Republic of Poland, which shall immediately so advise the Government of each of the high contracting parties.

(2) The denunciation shall take effect six months after notification thereof and only with respect to the party with which it shall have originated.

ART. 40. (1) The high contracting parties may, at the time of signing, of depositing their ratifications or adhering, declare that their acceptance of the present convention does not apply to all or part of their colonies, protectorates, territories under mandate, or any other territory subject to their sovereignty or authority, or to any other territory under suzerainty.

(2) They may, accordingly, subsequently adhere separately in the name of all or part of their colonies, protectorates, territories under mandate, or any other territory subject to their sovereignty or authority, or any other territory under suzerainty.

ART. 41. Each of the high contracting parties shall have the right to occasion, not sooner than two years after the present convention becomes effective, a meeting of another international conference for the purpose of seeking to find improvements which might be made in the present convention. For such purpose, it shall write to the Government of the French Republic which shall take the necessary measures to prepare for such conference.

The present convention, done at Warsaw October 12, 1929, shall remain open for signature until January 31, 1930.

Signed for:

*GERMANY
*AUSTRIA
BELGIUM
*UNITED STATES OF BRAZIL
BULGARIA
CHINA
*DENMARK
EGYPT
HUNGARY
*ITALY
JAPAN
LATVIA
*LUXEMBURG
MEXICO
NORWAY
NETHERLANDS

*Indicates signatures affixed.

Spain
Estonia
Finland
*France
*Great Britain and Northern Ireland
*Commonwealth of Australia
*Union of South Africa
Hellenic Republic
*Poland
Rumania
Sweden
*Switzerland
Czechoslovakia
Union of Socialist Soviet Republics
Venezuela
*Yugoslavia

ADDITIONAL PROTOCOL

Ad Art. 2

[Translation]

The high contracting parties reserve the right to declare, at the time of ratification or adherence, that Art. 2, par. 1, of the present convention shall not apply to international transportations by air effected directly by the state, its colonies, protectorates, territories under mandate or any other territory under its sovereignty, suzerainty or authority.

[The same countries and signatures as are listed above follow here.]

FINAL PROTOCOL OF THE SECOND INTERNATIONAL CONFERENCE ON PRIVATE AERIAL LAW

[Translation]

The delegates to the Second International Conference on Private Aerial Law met at Warsaw from October 4 to 12, 1929, for the purpose of discussing the draft convention relative to air transportation documents and the liability of the carrier in international transportation by aircraft drawn up by the International Technical Committee of Aerial Legal Experts, formed by virtue of a motion of the First International Conference on Private Aerial Law which met at Paris from October 27 to November 6, 1925.

The delegations meeting at Warsaw were composed as follows:

* Indicates signatures affixed.

[Here follows a list of the delegations of:

GERMANY
AUSTRIA
BELGIUM
BRAZIL
BULGARIA
CHINA
DENMARK
EGYPT
SPAIN
ESTONIA
FINLAND
FRANCE
GREAT BRITAIN
AUSTRALIA
UNION OF SOUTH AFRICA
HELLENIC REPUBLIC
HUNGARY
ITALY
JAPAN
LATVIA
LUXEMBURG
MEXICO
NORWAY
NETHERLANDS
POLAND
RUMANIA
SWEDEN
SWITZERLAND
CZECHOSLOVAKIA
UNION OF SOCIALIST SOVIET REPUBLICS
VENEZUELA
YUGOSLAVIA]

I. As a result of their deliberations, the delegates named above have agreed to submit for the signature of the respective plenipotentiaries of the high contracting parties the text of a draft convention for the unification of certain rules relative to international transportation by air, which shall remain open for signature until January 31, 1930.

II. The conference has passed the following recommendations and resolutions:

A. The conference, considering that the Warsaw convention only regulates certain questions relative to transportation by air and that international air navigation is raising many other questions which it would be desirable to regulate by international understandings,

Recommends

that other conferences be convoked later, whch will continue this work of unification, by the French Government, which has taken the initiative in the convocation of these conferences.

B. The conference, considering the importance from an international standpoint of uniform regulations for transportations by air of every kind,

Recommends

that the International Technical Committee of Aerial Legal

Experts prepare a preliminary draft convention on the subject as soon as possible.

C. The conference, considering the expediency of having transportation documents drawn up uniformly for all air navigation companies,

Recommends

that they adopt the models prepared by the International Technical Committee of Aerial Legal Experts.

D. The conference, having taken cognizance of the proposal made by the Brazilian delegation with respect to the definition of the carrier, under Art. 1, believing that the question should not be settled in this convention,

Refers the proposal to the International Technical Committee of Aerial Legal Experts with the memorandum prepared by the said delegation in order that it may use this preparatory work.

E. The conference, having taken cognizance of the proposal of the Brazilian delegation that an article respecting the obligation of the carrier to preserve transportation documents for two years in conformity with the provisions already adopted by the Italian law be added to the convention, considering that the question should not be dealt with in this convention,

Draws the attention of the International Technical Committee of Aerial Legal Experts to the proposal so that it may use the Brazilian proposal in its labors.

In faith whereof the delegates have signed the present final protocol.

Done at Warsaw, October 12, one thousand nine hundred and twenty-nine, in a single copy, which shall remain in the archives of the Ministry of Foreign Affairs of the Republic of Poland and an authenticated copy of which shall be transmitted to all the delegations taking part in the conference.

Signed for:

*Germany
*Austria
Belgium
*Brazil
Bulgaria
*China
*Denmark
*Italy
*Japan
*Latvia
*Luxemburg
*Mexico
*Norway
*Netherlands

*Indicates signatures affixed.

*Egypt
*Spain
*Estonia
*Finland
*France
*Great Britain and Northern Ireland
*Commonwealth of Australia
*Union of South Africa
*Hellenic Republic
*Hungary
*Poland
*Rumania
*Sweden
*Switzerland
*Czechoslovakia
*Union of Socialist Soviet Republics, subject to the reservation in the declarations made at the closing session.
Venezuela
*Yugoslavia

* Indicates signature affixed.

APPENDIX IV

CONVENTION BETWEEN FRANCE AND GERMANY RELATING TO AIR NAVIGATION[1]

The President of the French Republic and the President of the German Reich, equally convinced of the mutual interest of France and Germany to promote, for peaceful ends and within the framework of the existing treaties and conventions, their aerial relations and international aerial relations in general, have determined to conclude a convention for this purpose, and have appointed as their respective plenipotentiaries:

The President of the French Republic:

His Excellency M. Aristide Briand, Deputy, President of the Council, Minister for Foreign Affairs;

The President of the German Reich:

His Excellency Herr von Hoesch, German Ambassador Extraordinary and Plenipotentiary to the President of the French Republic;

Who, having exchanged their full powers, found in good and due form, have agreed as follows:

ART. 1. Each of the high contracting parties will accord in time of peace to the aircraft of the other contracting party duly registered in the state, freedom of passage above its territory, provided that the conditions set forth in the present convention are observed.

It is agreed, however, that the establishment or operation, by air navigation enterprises of one of the high contracting parties, of regular air lines passing over the territory of the other high contracting party (with or without landing) shall be made conditional to a special agreement between the two states.

For the purpose of the present convention, "territory" means the territory of the mother country including the territorial waters.

"Aircraft" means private aircraft and state aircraft employed exclusively in commercial service.

[1] International Commission for Air Navigation, *Official Bulletin*, May, 1927, No. 12, p. 6-9.

ART. 2. Aircraft of one of the high contracting parties, their crew and passengers, when on the territory of the other state, shall be subject to the obligations which arise from regulations in force in the said state, particularly prescriptions relating to air navigation in general, in so far as they are applicable to all foreign aircraft without distinction of nationality, to customs and other dues, export and import prohibitions, the carriage of persons and goods, public security and order. They shall also be subject to the other obligations which arise from general legislation in force, unless it is otherwise provided in the present convention.

It is agreed that the carriage of passengers and goods for hire between two points within national territory may be reserved to national aircraft.

ART. 3. Either of the contracting parties shall be entitled to prohibit air navigation over certain areas of its territory, subject to no distinction being made in this respect between its national aircraft and the aircraft of the other state. Each of the contracting states shall communicate to the other state a list of the territorial areas over which air navigation is prohibited.

Furthermore, each of the contracting parties reserves to itself the right to restrict or prohibit temporarily, in exceptional circumstances and with immediate effect, air navigation over the whole or parts of its territory, provided that no distinction shall be made in this respect between aircraft of the other contracting party and aircraft of any other foreign country.

ART. 4. Every aircraft which finds itself above a prohibited area shall immediately give the signal of distress provided in the regulations as to air navigation of the state flown over, and shall land as soon as possible on one of the aerodromes of that state and outside the prohibited area.

ART. 5. Aircraft shall carry distinctive and clearly visible marks permitting of their identification in flight (nationality and registration marks). They shall also bear the name and residence of the owner.

Aircraft shall be provided with a certificate of registration and a certificate of airworthiness and all other documents required in their country of origin for air navigation.

All the members of the crew who, on an aircraft, perform duties subject in their country of origin to a special authoriza-

tion, must be provided with the documents prescribed for air navigation in their country of origin and particularly with the required certificates and licenses.

The other members of the crew must be provided with documents giving their occupation on board, their profession, identity and nationality.

Certificates of airworthiness, certificates of competency and licenses, issued or rendered valid by one of the high contracting parties for the aircraft or crew, shall have the same validity in the other state as the corresponding documents issued by the latter state.

Each of the high contracting parties reserves to itself the right to refuse to recognize, as regards air navigation within and above its own territory, certificates granted by the other contracting party to persons under its jurisdiction.

In so far as it shall not have been otherwise agreed, the crew and a certificate of airworthiness and all other documents required by the regulations in force for international traffic.

Art. 6. On the territory of one of the high contracting parties the aircraft of the other contracting party shall carry wireless apparatus only in so far as shall be permitted by the two contracting states. Such apparatus shall be used only by such members of the crew as are provided with a special authorization for the purpose issued by their state of origin.

The two contracting states reserve to themselves the right for reasons of safety to lay down regulations for the compulsory equipment of aircraft with wireless apparatus.

Art. 7. Aircraft, their crew or passengers, shall not carry arms, munitions, asphyxiating gases, explosives, carrier pigeons or photographic apparatus, except with the authorization of the state flown over.

Art. 8. Aircraft carrying passengers or goods must be provided with a list of the names of the passengers and for goods with a manifest describing the nature and quantity of the goods carried, as well as the necessary customs declarations.

If, on the arrival of the aircraft, any difference is ascertained between the goods carried and the documents above mentioned, the customs authorities of the airport of arrival shall enter into communication direct with the competent customs authorities of the other contracting state.

The carriage of mail will be regulated direct between the postal administrations of the two contracting states by means of special arrangements.

Art. 9. In all cases of departure or landing, each of the contracting states shall have the right within its territory to have the aircraft of the other state visited by its competent authorities and to examine the certificates and other documents with which it must be provided.

Art. 10. Aerodromes which are open to public use for air navigation shall be open to the aircraft of both states. These aircraft shall also be entitled to the use of meteorological information, radioelectric communications, day and night marking signals. The charges to be made (landing fee, charge for accommodation, etc.) shall be the same for national aircraft as for the aircraft of the other state.

Art. 11. Aircraft arriving in or departing from one of the contracting states must land at or depart from an aerodrome open to public use for air navigation and classified as a customs aerodrome (with passport examination service), without making any intermediary landing between the frontier and the said aerodrome. In special cases the competent authorities may authorize the departure from or arrival at other aerodromes, where the customs and passport formalities will be carried out. The prohibition of intermediary landing applies also to these special cases.

In the case of a forced landing outside the aerodrome referred in subpar. 1, the pilot, crew and passengers must conform to the national regulations provided in such case.

Each of the high contracting parties will furnish to the other contracting state a list of the aerodromes open to public air navigation. This list shall designate those of the aerodromes which are classified as customs aerodromes. Any modification of such list or any restriction, even temporary, of the right to use any of such aerodromes, shall be immediately notified to the other contracting party.

Art. 12. The common frontiers of the two high contracting parties may be crossed only between points determined by common agreement. Frontiers not common to both states will be crossed between points fixed by the state concerned.

It is agreed that any zone within which one of the contracting

parties authorizes the crossing of its frontiers (common or not common) by its national aircraft or aircraft of another nationality can *ipso facto* be used for the passage of aircraft of the other contracting party.

ART. 13. By way of ballast, only fine sand or water may be dropped.

ART. 14. In the course of flight, apart from ballast, only such articles or substance may be thrown or dropped, in respect of which the state upon whose territory the throwing or dropping takes place shall have granted a special permit.

ART. 15. As regards all questions of nationality in connection with the application of the present convention, it is understood that aircraft possess the nationality of the state on the register of which it shall have been duly entered.

No aircraft shall be entered on the register of one of the two states unless it belongs wholly to nationals of that state.

If the owner is a company, such company, whatever be its form, must fulfill all the conditions prescribed by French or German legislation, in order to be considered as possessing French or German nationality as the case may be.

ART. 16. The two high contracting parties will exchange every month between themselves lists of the registrations and cancellations of registrations entered on their official registers during the preceding month.

ART. 17. Every aircraft passing through the territory and making only the landings and stoppages reasonably necessary, may be exempted from any seizure on the ground of infringement of patent, design or model, subject to the deposit of security the amount of which, in default of amicable agreement, shall be fixed with the least possible delay by the competent authority of the place of seizure.

ART. 18. Aircraft of one of the two contracting states shall be entitled to the same measures of assistance for landing, particularly in case of distress, as national aircraft.

With regard to the salvage of aircraft wrecked at sea, in the absence of any agreement to the contrary the principles of maritime law as set forth in the international conventions in force, will apply, or, in default thereof, the national law of the salvors.

ART. 19. The two high contracting parties will communicate

to each other all the regulations relative to air navigation which are in force in their territory.

ART. 20. The details of application of the present convention, which shall not have been amicably settled by means of the normal methods of diplomacy, shall be settled in conformity with the provisions of the Franco-German arbitration convention dated October 16, 1925.[1]

ART. 21. Either of the high contracting parties may at any time denounce the present convention by giving notice twelve months in advance.

ART. 22. The present convention will be ratified, and the ratifications will be exchanged at Paris as soon as possible. It will enter into force on the date of the exchange of ratifications.

In faith whereof the plenipotentiaries have signed the present convention.

Done at Paris, in two originals in French and German the 22nd May 1926.

(L. S.) Signed: A. BRIAND (L. S.) Signed: HOESCH

FINAL PROTOCOL

The contracting parties agree in recognizing that the exceptional circumstances mentioned in Art. 3, subpar. 2, of the present convention are, in conformity with Art. 1, subpar. 1, circumstances arising in time of peace.

Done at Paris in two originals in French and German the 22nd May 1926.

Signed: A. BRIAND Signed: HOESCH

[1] For text see League of Nations *Treaty Series*, LIV, p. 315.

APPENDIX V

ARRANGEMENT EFFECTED BY EXCHANGE OF NOTES BETWEEN THE UNITED STATES AND THE DOMINION OF CANADA, AUGUST 29, 1929, AND OCTOBER 22, 1929[1]

The Secretary of State to the Chargé d'Affaires ad interim of the Dominion of Canada

DEPARTMENT OF STATE
WASHINGTON, *August 29, 1929.*

SIR:

The Department refers to the negotiations which have been conducted between this Department and your Legation for the conclusion of a reciprocal arrangement between the United States and Canada for the admission of civil aircraft, the issuance of pilots' licenses, and the acceptance of certificates of airworthiness for aircraft imported as merchandise.

It is my understanding that it has been agreed in the course of these negotiations that this arrangement shall be as follows:

1. All state aircraft other than military, naval, customs and police aircraft, shall be treated as civil aircraft and as such shall be subject to the requirements hereinafter provided for civil aircraft.

2. Subject to the conditions and limitations hereinafter contained and set forth, Canadian civil aircraft shall be permitted to operate in the United States and, in like manner, civil aircraft of the United States shall be permitted to operate in the Dominion of Canada.

3. Canadian aircraft before entering the United States, must be registered and passed as airworthy by the Canadian Department of National Defense and must bear the registration markings allotted to it by that department. Aircraft of the United States, before entering Canada, must be registered and passed as airworthy by the United States Department of Commerce, and must bear the registration markings allotted to it by that

[1] Publications of the Department of State, No. 19, Executive Agreement Series, No. 2.

department, preceded by the letter "N", placed on it in accordance with the Air Commerce Regulations of the Department of Commerce.

4. Canadian aircraft making flights into the United States must carry aircraft, engine and journey log books, and the certificates of registration and airworthiness, issued by the Canadian Department of National Defense. The pilots shall bear licenses issued by said Department of National Defense. Like requirements shall be applicable in Canada with respect to aircraft of the United States and American pilots making flights into Canada. The certificates and licenses in the latter case shall be those issued by the United States Department of Commerce; provided, however, that pilots who are nationals of the one country shall be licensed by the other country under the following conditions:

(*a*) The Department of National Defense of the Dominion of Canada will issue pilots' licenses to American nationals upon a showing that they are qualified under the regulations of that department covering the licensing of pilots; and the United States Department of Commerce will issue pilots' licenses to Canadian nationals upon a showing that they are qualified under the regulations of that department covering the licensing of pilots.

(*b*) Pilots' licenses issued by the United States Department of Commerce to Canadian nationals shall entitle them to the same privileges as are granted by pilots' licenses issued to American nationals, and pilots' licenses issued by the Department of National Defense of the Dominion of Canada to American nationals shall entitle them to the same privileges as are granted by pilots' licenses issued to Canadian nationals.

(*c*) Pilots' licenses granted to nationals of the one country by the other country shall not be construed to accord to them the right to register aircraft in such other country.

(*d*) Pilots' licenses granted to nationals of the one country by the other country shall not be construed to accord to them the right to operate aircraft in air commerce unless the aircraft is registered in such other country in accordance with its registration requirements except as provided for in Pars. (*a*) and (*b*) of Clause 6, with respect to discharging and taking on through passengers and/or cargo.

5. No Canadian aircraft in which photographic apparatus has been installed shall be permitted to operate in the United States, nor shall any photographs be taken from Canadian aircraft while operating in or over United States territory, except in cases where the entrance of such aircraft or the taking of photographs is specifically authorized by the Department of Commerce of the United States. Like restrictions shall be applicable to aircraft of the United States desiring to operate in or over Canadian territory, and in such cases the entrance of aircraft in which photographic apparatus has been installed, and the taking of photographs shall not be permissible without the specific authorization of the Department of National Defense of Canada.

6. (*a*) If the Canadian aircraft and pilot are licensed to carry passengers and/or cargo in the Dominion of Canada, they may do so between Canada and the United States, but not between points in the United States, except that subject to compliance with customs, quarantine and immigration requirements, such aircraft shall be permitted to discharge through passengers and/or cargo destined to the United States at one airport in the United States, according landing facilities to foreign aircraft, and to proceed with the remaining passengers and/or cargo to any other airports in the United States, according landing facilities to foreign aircraft, for the purpose of discharging the remaining passengers and/or cargo; and they shall in like manner be permitted to take on passengers and/or cargo destined to Canada at different airports in the United States on the return trip to Canada.

(*b*) If the United States aircraft and pilot are licensed to carry passengers and/or cargo in the United States, they may do so between the United States and Canada, but not between points in Canada, except that subject to compliance with customs, quarantine and immigration requirements such aircraft shall be permitted to discharge through passengers and/or cargo destined to Canada at one airport in Canada, according landing facilities to foreign aircraft, and to proceed with the remaining passengers and/or cargo to any other airports in Canada, according landing facilities to foreign aircraft, for the purpose of discharging the remaining passengers and/or cargo; and they shall in like manner be permitted to take on passengers

and/or cargo destined to the United States at different airports in Canada on the return trip to the United States.

7. The right accorded to Canadian pilots and aircraft to make flights over United States territory under the conditions provided for in the present arrangement shall be accorded, subject to compliance with the laws, rules and regulations in effect in the United States governing the operation of civil aircraft. The right accorded to American pilots and aircraft of the United States to make flights over Canadian territory, under the conditions herein provided for, shall be accorded, subject to compliance with the laws, rules and regulations in effect in Canada governing the operation of civil aircraft.

8. Certificates of airworthiness for export issued in connection with aircraft built in Canada imported into the United States from Canada as merchandise will be accepted by the Department of Commerce of the United States if issued by the Department of National Defense of the Dominion of Canada in accordance with its requirements as to airworthiness. Certificates of airworthiness for export issued in connection with aircraft built in the United States imported into Canada from the United States as merchandise will, in like manner, be accepted by the Department of National Defense of Canada, if issued by the Department of Commerce of the United States in accordance with its requirements as to airworthiness.

9. It shall be understood that this arrangement shall be subject to termination by either Government on 60 days' notice given to the other Government, by a further arrangement between the two Governments dealing with the same subject, or by the enactment of legislation in either country inconsistent therewith.

I shall be glad to have you inform me whether it is the understanding of your Government that the arrangement agreed upon is as herein set forth. If so, the arrangement will be considered to be operative from the date of the receipt of your note so advising me.

Accept, Sir, the renewed assurances of my highest consideration.

H. L. Stimson

Mr. Hume Wrong,
Chargé d'Affaires ad interim of
the Dominion of Canada.

The Minister of the Dominion of Canada to the Secretary of State

No. 207

CANADIAN LEGATION
WASHINGTON, *October 22, 1929.*

SIR:

I have the honor to refer to your note of August 29, 1929, concerning the proposed reciprocal arrangement between the United States and Canada for the admission of civil aircraft, the issuance of pilots' licenses, and the acceptance of certificates of airworthiness for aircraft imported as merchandise. I have been instructed to inform you that His Majesty's Government in Canada concur in the terms of the agreement as set forth in your note, and will, therefore, consider it to be operative from this date.

I have the honor to be, with the highest consideration, Sir,

Your most obedient, humble servant,

VINCENT MASSEY

The Hon. Henry L. Stimson
Secretary of State of the United States
Washington, D. C.

APPENDIX VI

PROPOSED RULES FOR THE REGULATION OF AERIAL WARFARE DRAFTED BY THE COMMISSION OF JURISTS IN 1923[1]

Chapter I. Applicability: Classification and Remarks

Art. 1. The rules of aerial warfare apply to all aircraft, whether lighter or heavier than air, irrespective of whether they are, or are not, capable of floating on the water.

Art. 2. The following shall be deemed to be public aircraft:—

(*a.*) Military aircraft.

(*b.*) Nonmilitary aircraft exclusively employed in the public service.

All other aircraft shall be deemed to be private aircraft.

Art. 3. A military aircraft shall bear an external mark indicating its nationality and military character.

Art. 4. A public nonmilitary aircraft employed for customs or police purposes shall carry papers evidencing the fact that it is exclusively employed in the public service. Such an aircraft shall bear an external mark indicating its nationality and its public nonmilitary character.

Art. 5. Public nonmilitary aircraft other than those employed for customs or police purposes shall in time of war bear the same external marks, and for the purposes of these rules shall be treated on the same footing, as private aircraft.

Art. 6. Aircraft not comprised in Arts. 3 and 4 and deemed to be private aircraft shall carry such papers and bear such

[1] British Parliamentary Papers 1924, *Dispatch from the First British Delegate to the International Commission for the Revision of the Rules of Warfare, The Hague, December 10, 1922-February 17, 1923* p. 15-60 (Cmd. 2201).

The proposed rules are embodied in a report, the commentary of which has been omitted in this reprint.

The articles have been published in the United States in a press release of the Department of State, reprinted in the *American Journal of International Law, Supplement*, XVII, p. 242 at 245. The full report is printed in John Bassett Moore, *International Law and Some Current Illusions*, p. 210 *ff.*

The report was signed on behalf of the United States, the British Empire, France, Italy, Japan and the Netherlands.

external marks as are required by the rules in force in their own country. These marks must indicate their nationality and character.

Art. 7. The external marks required by the above articles shall be so affixed that they can not be altered in flight. They shall be as large as is practicable and shall be visible from above, from below and from each side.

Art. 8. The external marks, prescribed by the rules in force in each state, shall be notified promptly to all other powers.

Modifications adopted in time of peace of the rules prescribing external marks shall be notified to all other powers before they are brought into force.

Modifications of such rules adopted at the outbreak of war or during hostilities shall be notified by each power as soon as possible to all other powers and at latest when they are communicated to its own fighting forces.

Art. 9. A belligerent nonmilitary aircraft, whether public or private, may be converted into a military aircraft, provided that the conversion is effected within the jurisdiction of the belligerent state to which the aircraft belongs and not on the high seas.

Art. 10. No aircraft may possess more than one nationality.

Chapter II. General Principles

Art. 11. Outside the jurisdiction of any state, belligerent or neutral, all aircraft shall have full freedom of passage through the air and of alighting.

Art. 12. In time of war any state, whether belligerent or neutral, may forbid or regulate the entrance, movement or sojourn of aircraft within its jurisdiction.

Chapter III. Belligerents

Art. 13. Military aircraft are alone entitled to exercise belligerent rights.

Art. 14. A military aircraft shall be under the command of a person duly commissioned or enlisted in the military service of the state; the crew must be exclusively military.

Art. 15. Members of the crew of a military aircraft shall

wear a fixed distinctive emblem of such character as to be recognizable at a distance in case they become separated from their aircraft.

ART. 16. No aircraft other than a belligerent military aircraft shall engage in hostilities in any form.

The term "hostilities" includes the transmission during flight of military intelligence for the immediate use of a belligerent.

No private aircraft, when outside the jurisdiction of its own country, shall be armed in time of war.

ART. 17. The principles laid down in the Geneva convention, 1906[1] and the convention for the adaptation of the said convention to maritime war (No. X of 1907)[2] shall apply to aerial warfare and to flying ambulances, as well as to the control over flying ambulances exercised by a belligerent commanding officer.

In order to enjoy the protection and privileges allowed to mobile medical units by the Geneva convention, 1906, flying ambulances must bear the distinctive emblem of the Red Cross in addition to the usual distinguishing marks.

CHAPTER IV. HOSTILITIES

ART. 18. The use of tracer, incendiary or explosive projectiles by or against aircraft is not prohibited.

This provision applies equally to states which are parties to the declaration of St. Petersburg, 1868,[3] and to those which are not.

ART. 19. The use of false external marks is forbidden.

ART. 20. When an aircraft has been disabled, the occupants, when endeavoring to escape by means of a parachute, must not be attacked in the course of their descent.

ART. 21. The use of aircraft for the purpose of disseminating propaganda shall not be treated as an illegitimate means of warfare.

Members of the crews of such aircraft must not be deprived of their rights as prisoners of war on the charge that they have committed such an act.

ART. 22. Aerial bombardment for the purpose of terrorizing

[1] *Treaties, Conventions, etc., 1776-1907*, p. 2183.

[2] *Ibid.*, p. 2326.

[3] Relative to explosive bullets; for text see *British and Foreign State Papers, LVIII*, p. 16, and in English *American Journal of International Law, Supplement*, I, p. 95

the civilian population, of destroying or damaging private property not of military character, or of injuring noncombatants is prohibited.

ART. 23. Aerial bombardment for the purpose of enforcing compliance with requisitions in kind or payment of contributions in money is prohibited.

ART. 24. 1. Aerial bombardment is legitimate only when directed at a military objective, that is to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent.

2. Such bombardment is legitimate only when directed exclusively at the following objectives: military forces; military works; military establishments or depots; factories constituting important and well-known centers engaged in the manufacture of arms, ammunition or distinctively military supplies; lines of communication or transportation used for military purposes.

3. The bombardment of cities, towns, villages, dwellings or buildings not in the immediate neighborhood of the operations of land forces is prohibited. In cases where the objectives specified in par. 2 are so situated that they can not be bombarded without the indiscriminate bombardment of the civilian population, the aircraft must abstain from bombardment.

4. In the immediate neighborhood of the operations of land forces, the bombardment of cities, towns, villages, dwellings or buildings is legitimate provided that there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardment, having regard to the danger thus caused to the civilian population.

5. A belligerent state is liable to pay compensation for injuries to person or to property caused by the violation by any of its officers or forces of the provisions of this article.

ART. 25. In bombardment by aircraft, all necessary steps must be taken by the commander to spare as far as possible buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospital ships, hospitals and other places where the sick and wounded are collected, provided such buildings, objects or places are not at the time used for military purposes. Such buildings, objects and places must by day be indicated by marks visible to aircraft. The use of marks to indicate other buildings, objects or places than those specified

above is to be deemed an act of perfidy. The marks used as aforesaid shall be in the case of buildings protected under the Geneva convention the red cross on a white ground, and in the case of other protected buildings a large rectangular panel divided diagonally into two pointed triangular portions, one black and the other white.

A belligerent who desires to secure by night the protection for the hospitals and other privileged buildings above mentioned must take the necessary measures to render the special signs referred to sufficiently visible.

ART. 26. The following special rules are adopted for the purpose of enabling states to obtain more efficient protection for important historic monuments situated within their territory, provided that they are willing to refrain from the use of such monuments and a surrounding zone for military purposes, and to accept a special régime for their inspection:—

1. A state shall be entitled, if it sees fit, to establish a zone of protection round such monuments situated in its territory. Such zones shall in time of war enjoy immunity from bombardment.

2. The monuments round which a zone is to be established shall be notified to other powers in peace time through the diplomatic channel; the notification shall also indicate the limits of the zones. The notification may not be withdrawn in time of war.

3. The zone of protection may include, in addition to the area actually occupied by the monument or group of monuments, an outer zone, not exceeding 500 meters in width, measured from the circumference of the said area.

4. Marks clearly visible from aircraft either by day or by night will be employed for the purpose of insuring the identification by belligerent airmen of the limits of the zones.

5. The marks on the monuments themselves will be those defined in Art. 25. The marks employed for indicating the surrounding zones will be fixed by each state adopting the provisions of this article, and will be notified to other powers at the same time as the monuments and zones are notified.

6. Any abusive use of the marks indicating the zones referred to in par. 5 will be regarded as an act of perfidy.

7. A state adopting the provisions of this article must abstain

from using the monument and the surrounding zone for military purposes, or for the benefit in any way whatever of its military organization, or from committing within such monument or zone any act with a military purpose in view.

8. An inspection committee consisting of three neutral representatives accredited to the state adopting the provisions of this article, or their delegates, shall be appointed for the purpose of insuring that no violation is committed of the provisions of par. 7. One of the members of the committee of inspection shall be the representative (or his delegate) of the state to which has been intrusted the interests of the opposing belligerent.

ART. 27. Any person on board a belligerent or neutral aircraft is to be deemed a spy only if acting clandestinely or on false pretenses he obtains or seeks to obtain, while in the air, information within belligerent jurisdiction or in the zone of operations of a belligerent with the intention of communicating it to the hostile party.

ART. 28. Acts of espionage committed after leaving the aircraft by members of the crew of an aircraft or by passengers transported by it are subject to the provisions of the land warfare regulations.[1]

ART. 29. Punishment of the acts of espionage referred to in Arts. 27 and 28 is subject to Arts. 30 and 31 of the land warfare regulations.

CHAPTER V. MILITARY AUTHORITY OVER ENEMY AND NEUTRAL AIRCRAFT AND PERSONS ON BOARD

ART. 30. In case a belligerent commanding officer considers that the presence of aircraft is likely to prejudice the success of the operations in which he is engaged at the moment, he may prohibit the passing of neutral aircraft in the immediate vicinity of his forces or may oblige them to follow a particular route. A neutral aircraft which does not conform to such directions, of which he has had notice issued by the belligerent commanding officer, may be fired upon.

ART. 31. In accordance with the principles of Art. 53 of the land warfare regulations, neutral private aircraft found upon

[1] See Arts. 29-31 of the Hague convention, *Treaties Conventions, etc., 1776-1909*, p. 2286.

entry in the enemy's jurisdiction by a belligerent occupying force may be requisitioned, subject to the payment of full compensation.

ART. 32. Enemy public aircraft, other than those treated on the same footing as private aircraft, shall be subject to confiscation without prize proceedings.

ART. 33. Belligerent nonmilitary aircraft, whether public or private, flying within the jurisdiction of their own state, are liable to be fired upon unless they make the nearest available landing on the approach of enemy military aircraft.

ART. 34. Belligerent nonmilitary aircraft, whether public or private, are liable to be fired upon, if they fly (1) within the jurisdiction of the enemy, or (2) in the immediate vicinity thereof and outside the jurisdiction of their own state, or (3) in the immediate vicinity of the military operations of the enemy by land or sea.

ART. 35. Neutral aircraft flying within the jurisdiction of a belligerent, and warned of the approach of military aircraft of the opposing belligerent, must make the nearest available landing. Failure to do so exposes them to the risk of being fired upon.

ART. 36. When an enemy military aircraft falls into the hands of a belligerent, the members of the crew and the passengers, if any, may be made prisoners of war.

The same rule applies to the members of the crew and the passengers, if any, of an enemy public nonmilitary aircraft, except that in the case of public nonmilitary aircraft devoted exclusively to the transport of passengers, the passengers will be entitled to be released unless they are in the service of the enemy, or are enemy nationals fit for military service.

If an enemy private aircraft falls into the hand of a belligerent, members of the crew who are enemy nationals or who are neutral nationals in the service of the enemy, may be made prisoners of war. Neutral members of the crew, who are not in the service of the enemy, are entitled to be released if they sign a written undertaking not to serve in any enemy aircraft while hostilities last. Passengers are entitled to be released unless they are in the service of the enemy or are enemy nationals fit for military service, in which cases they may be made prisoners of war.

Release may in any case be delayed if the military interests of the belligerent so require.

The belligerent may hold as prisoners of war any member of the crew or any passenger whose service in a flight at the close of which he has been captured has been of special and active assistance to the enemy.

The names of individuals released after giving a written undertaking in accordance with the third paragraph of this article will be notified to the opposing belligerent, who must not knowingly employ them in violation of their undertaking.

Art. 37. Members of the crew of a neutral aircraft which has been detained by a belligerent shall be released unconditionally, if they are neutral nationals and not in the service of the enemy. If they are enemy nationals or in the service of the enemy, they may be made prisoners of war.

Passengers are entitled to be released unless they are in the service of the enemy or are enemy nationals fit for military service, in which cases they may be made prisoners of war.

Release may in any case be delayed if the military interests of the belligerent so require.

The belligerent may hold as prisoners of war any member of the crew or any passenger whose service in a flight at the close of which he has been captured has been of special and active assistance to the enemy.

Art. 38. Where under the provisions of Arts. 36 and 37 it is provided that members of the crew or passengers may be made prisoners of war, it is to be understood that, if they are not members of the armed forces, they shall be entitled to treatment not less favorable than that accorded to prisoners of war.

Chapter VI. Belligerent Duties Toward Neutral States and Neutral Duties Toward Belligerent States

Art. 39. Belligerent aircraft are bound to respect the rights of neutral powers and to abstain within the jurisdiction of a neutral state from the commission of any act which it is the duty of that state to prevent.

Art. 40. Belligerent military aircraft are forbidden to enter the jurisdiction of a neutral state.

ART. 41. Aircraft on board vessels of war, including aircraft carriers, shall be regarded as part of such vessels.

ART. 42. A neutral Government must use the means at its disposal to prevent the entry within its jurisdiction of belligerent military aircraft and to compel them to alight if they have entered such jurisdiction.

A neutral Government shall use the means at its disposal to intern any belligerent military aircraft which is within its jurisdiction after having alighted for any reason whatsoever, together with its crew and the passengers, if any.

ART. 43. The personnel of a disabled belligerent military aircraft rescued outside neutral waters and brought into the jurisdiction of a neutral state by a neutral military aircraft and there landed shall be interned.

ART. 44. The supply in any manner, directly or indirectly, by a neutral Government to a belligerent power of aircraft, parts of aircraft, or material, supplies or munitions required for aircraft is forbidden.

ART. 45. Subject to the provisions of Art. 46, a neutral power is not bound to prevent the export or transit on behalf of a belligerent of aircraft, parts of aircraft, or material, supplies or munitions for aircraft.

ART. 46. A neutral Government is bound to use the means at its disposal:—

1. To prevent the departure from its jurisdiction of an aircraft in a condition to make a hostile attack against a belligerent power, or carrying or accompanied by appliances or materials the mounting or utilization of which would enable it to make a hostile attack, if there is reason to believe that such aircraft is destined for use against a belligerent power.

2. To prevent the departure of an aircraft the crew of which includes any member of the combatant forces of a belligerent power.

3. To prevent work upon an aircraft designed to prepare it to depart in contravention of the purposes of this article.

On the departure by air of any aircraft dispatched by persons or companies in neutral jurisdiction to the order of a belligerent power, the neutral Government must prescribe for such aircraft a route avoiding the neighborhood of the military operations of the opposing belligerent, and must exact whatever

guaranties may be required to insure that the aircraft follows the route prescribed.

ART. 47. A neutral state is bound to take such steps as the means at its disposal permit to prevent within its jurisdiction aerial observation of the movements, operations or defenses of one belligerent, with the intention of informing the other belligerent.

This provision applies equally to a belligerent military aircraft on board a vessel of war.

ART. 48. The action of a neutral power in using force or other means at its disposal in the exercise of its rights or duties under these rules can not be regarded as a hostile act.

CHAPTER VII. VISIT AND SEARCH, CAPTURE AND CONDEMNATION

ART. 49. Private aircraft are liable to visit and search and to capture by belligerent military aircraft.

ART. 50. Belligerent military aircraft have the right to order public nonmilitary and private aircraft to alight in or proceed for visit and search to a suitable locality reasonably accessible.

Refusal, after warning, to obey such orders to alight or to proceed to such a locality for examination exposes an aircraft to the risk of being fired upon.

ART. 51. Neutral public nonmilitary aircraft, other than those which are to be treated as private aircraft, are subject only to visit for the purpose of the verification of their papers.

ART. 52. Enemy private aircraft are liable to capture in all circumstances.

ART. 53. A neutral private aircraft is liable to capture if it—

(*a.*) Resists the legitimate exercise of belligerent rights.

(*b.*) Violates a prohibition of which it has had notice issued by a belligerent commanding officer under Art. 30.

(*c.*) Is engaged in unneutral service.

(*d.*) Is armed in time of war when outside the jurisdiction of its own country.

(*e.*) Has no external marks or uses false marks.

(*f.*) Has no papers or insufficient or irregular papers.

(*g.*) Is manifestly out of the line between the point of departure and the point of destination indicated in its papers and

after such inquiries as the belligerent may deem necessary, no good cause is shown for the deviation. The aircraft, together with its crew and passengers, if any, may be detained by the belligerent, pending such inquiries.

(*h.*) Carries, or itself constitutes, contraband of war.

(*i.*) Is engaged in breach of a blockade duly established and effectively maintained.

(*k.*) Has been transferred from belligerent to neutral nationality at a date and in circumstances indicating an intention of evading the consequences to which an enemy aircraft, as such, is exposed.

Provided that in each case (except (*k.*)) the ground for capture shall be an act carried out in the flight in which the neutral aircraft came into belligerent hands, i.e., since it left its point of departure and before it reached its point of destination.

ART. 54. The papers of a private aircraft will be regarded as insufficient or irregular if they do not establish the nationality of the aircraft and indicate the names and nationality of the crew and passengers, the points of departure and destination of the flight, together with particulars of the cargo and the conditions under which it is transported. The logs must also be included.

ART. 55. Capture of an aircraft or of goods on board an aircraft shall be made the subject of prize proceedings, in order that any neutral claim may be duly heard and determined.

ART. 56. A private aircraft captured upon the ground that it has no external marks or is using false marks, or that it is armed in time of war outside the jurisdiction of its own country, is liable to condemnation.

A neutral private aircraft captured upon the ground that it has disregarded the direction of a belligerent commanding officer under Art. 30 is liable to condemnation, unless it can justify its presence within the prohibited zone.

In all other cases, the prize court in adjudicating upon any case of capture of an aircraft or its cargo, or of postal correspondence on board an aircraft, shall apply the same rules as would be applied to a merchant vessel or its cargo or to postal correspondence on board a merchant vessel.

ART. 57. Private aircraft which are found upon visit and search to be enemy aircraft may be destroyed if the belligerent

commanding officer finds it necessary to do so, provided that all persons on board have first been placed in safety and all the papers of the aircraft have been preserved.

Art. 58. Private aircraft which are found upon visit and search to be neutral aircraft liable to condemnation upon the ground of unneutral service, or upon the ground that they have no external marks or are bearing false marks, may be destroyed, if sending them in for adjudication would be impossible or would imperil the safety of the belligerent aircraft or the success of the operations in which it is engaged. Apart from the cases mentioned above, a neutral private aircraft must not be destroyed except in the gravest military emergency, which would not justify the officer in command in releasing it or sending it in for adjudication.

Art. 59. Before a neutral private aircraft is destroyed, all persons on board must be placed in safety, and all the papers of the aircraft must be preserved.

A captor who has destroyed a neutral private aircraft must bring the capture before the prize court, and must first establish that he was justified in destroying it under Art. 58. If he fails to do this, parties interested in the aircraft or its cargo are entitled to compensation. If the capture is held to be invalid, though the act of destruction is held to have been justifiable, compensation must be paid to the parties interested in place of the restitution to which they would have been entitled.

Art. 60. Where a neutral private aircraft is captured on the ground that it is carrying contraband, the captor may demand the surrender of any absolute contraband on board, or may proceed to the destruction of such absolute contraband, if sending in the aircraft for adjudication is impossible or would imperil the safety of the belligerent aircraft or the success of the operations in which it is engaged. After entering in the log book of the aircraft the delivery or destruction of the goods, and securing, in original or copy, the relevant papers of the aircraft, the captor must allow the neutral aircraft to continue its flight.

The provisions of the second paragraph of Art. 59 will apply where absolute contraband on board a neutral private aircraft is handed over or destroyed.

Chapter VIII. Definitions

Art. 61. The term "military" throughout these rules is to be read as referring to all branches of the forces, i.e., the land forces, the naval forces and the air forces.

Art. 62. Except so far as special rules are here laid down and except also so far as the provisions of Chapter VII of these rules or international conventions indicate that maritime law and procedure are applicable, aircraft personnel engaged in hostilities come under the laws of war and neutrality applicable to land troops in virtue of the custom and practice of international law and of the various declarations and conventions to which the states concerned are parties.

APPENDIX VII

INTERNATIONAL AGREEMENTS ON AIR NAVIGATION

In this list the following abbreviations are used: League of Nations, *Treaty Series* = L. N. *Tr. Ser.;* International Commission for Air Navigation, *Official Bulletin* = *I.C.A.N., Of. Bul.; American Journal of International Law, Official Documents* = *A.J.I.L., Of. Doc.; Revue Juridique Internationale de la Locomotion Aérienne* = *R.J.I. de L.A.;* Martens, *Nouveau Recueil général de Traités, troisième série* = *N. R. G., 3e sér.; British and Foreign State Papers* = *B. & F. State Papers; Zeitschrift für das Gesamte Luftrecht* = *Z.G.L.; Bolletino di Legislazione Doganale e Comerciale* = *B.L.D.C.;* British *Treaty Series* = Br. *Tr. Ser.;* United States *Treaty Series* = U. S. *Tr. Ser.;* United States *Bulletin of Treaty Information* = U. S. *Bul. Tr. Inf.*

MULTILATERAL TREATIES

1899

International declaration prohibiting the discharge of projectiles and explosives from balloons, signed at The Hague, July 29. France, Ministère des Affaires Etrangères, *Documents Diplomatiques, Conférence Internationale de la Paix, 1899,* p. 100; *A.J.I.L., Of. Doc.,* 1907, p. 104.

1907

International declaration prohibiting the discharge of projectiles and explosives from balloons, signed at The Hague, Oct. 18. France, Ministère des Affaires Etrangères, *Documents Diplomatiques, Conférence Internationale de la Paix, 1907,* p. 269; *B. & F. State Papers,* C, p. 455; *A.J.I.L., Of. Doc.,* 1908, p. 216.

1919

Allied and Associated Powers—Germany. Treaty of peace, signed at Versailles, June 28 (Arts. 198-202, 313-320). France, Ministère des Affaires Etrangères, *Traité de Paix entre les Puissances Alliées et Associées et l'Allemagne et Protocole, signés à Versailles le 28 juin 1919,* p. 95-96 (Paris, Imprimerie Nationale, 1919); *A.J.I.L., Of. Doc.,* 1919, p. 235; *N.R.G., 3e sér.,* XI, p. 323.

BELGIUM, BRITISH EMPIRE, FRANCE, ITALY, JAPAN—GERMANY. Agreement on aerial navigation with a view to the application of Art. 198 of the treaty of Versailles, signed at Paris, May 22, 1926 (came into force Aug. 9, 1926). L.N. *Tr. Ser.,* LVIII, p. 331; *N.R.G., 3e sér.,* XVI, p. 887.

Allied and Associated Powers—Austria. Treaty of peace, signed at St. Germain-en-Laye, Sept. 10 (Arts. 144-148, 276-283). France, Ministère des Affaires Etrangères, *Traité de Paix entre les Puissances Alliées et Associées et l'Autriche, Protocole et Déclarations, signés à Saint-Germain-en-Laye le 10 septembre, 1919,* p. 142 (Paris, Imprimerie Nationale, 1920); *A.J.I.L., Of. Doc.,* 1920, p. 153; *N.R.G., 3e sér.,* XI, p. 691.

British Empire, France, Italy, Japan—Austria. Agreement on aerial navigation with a view to the application of Art. 144 of the treaty of St. Germain, signed at Paris, Oct. 27, 1927. *N.R.G., 3e sér.,* XXI, p. 139.

Convention relating to the regulation of aerial navigation, signed at Paris, Oct. 13, with additional protocol signed at Paris, May 1, 1920 (came into force in respect of 14 countries, July 11, 1922). L.N. *Tr. Ser.,* XI, p. 173, 307; International Commission for Air Navigation, *Convention relating to the Regulation of Aerial Navigation Dated 13 October, 1919,* May, 1929, p. 1-85; *N.R.G. 3e sér.,* XXIII, p. 61, 114; *B. & F. State Papers,* CXII, p. 931 (the convention with the annexes as revised to date is appended to each number of the *Official Bulletin;* for text of the convention itself, as amended, see Appendix I, *supra*).

Protocol of amendment to Art. 5 of the convention, signed at London, Oct. 27, 1922. Br. *Tr. Ser.,* No. 12 (1925), Cmd. 2328.

Protocol of amendment to Art. 34 of the convention, signed at London, June 30, 1923. Br. *Tr. Ser.,* No. 13 (1925), Cmd. 2329.

Protocol of amendments to Arts. 3, 5, 7, 15, 34, 37, 41, 42 and to the final clauses of the convention, signed at Paris, June 15, 1929. U. S. *Bul. Tr. Inf.,* No. 4, 2d sup.; I.C.A.N., *Of. Bul.,* No. 16, p. 49; British Parl. Pap. Misc. No. 7 (1930) Cmd. 3541, p. 2.

Protocol relating to amendments to Arts. 34 and 40 of the convention signed at Paris, December 11, 1929. British Parl. Pap. Misc. No. 7 (1930) Cmd. 3541, p. 11.

Allied and Associated Powers—Bulgaria. Treaty of peace, signed at Neuilly, Nov. 27 (Arts. 89-93, 204 *ff*). Ministère des Affaires Etrangères, *Traité de Paix entre les Puissances Alliées et Associées et la Bulgarie et Protocole, signés à Neuilly-sur-Seine le 27 novembre, 1919,* p. 39 (Paris, Imprimerie Nationale, 1920); *A.J.I.L., Of. Doc.,* 1920, p. 286; *N.R.G. 3e sér.,* XII, p. 323.

British Empire, France, Italy, Japan — Bulgaria. Agreement on aerial navigation with a view to the application of Art. 89 of the treaty of Neuilly, signed at Paris, Mar. 31, 1927 (came into force, June 2, 1927). L.N. *Tr. Ser.,* LXVI, p. 59.

1920

Allied and Associated Powers—Hungary. Treaty of peace, signed at Trianon, June 4 (Arts. 128-132, 260-267). Ministère des Affaires Etrangères, *Traité de Paix entre les Puissances Alliées et Associées et la Hongrie et Protocole et Déclaration du 4 juin 1920,* p. 54 (Paris, Imprimerie Nationale, 1920); *A.J.I.L., Of. Doc.,* 1921, p. 42; *N.R.G., 3e sér.,* XII, p. 423.

British Empire, France, Italy, Japan — Hungary. Agreement on aerial navigation with a view to the application of Art. 128 of the treaty of Trianon, signed at Paris, May 19, 1927; with exchange of notes, Paris, July 12, 1927 (came into

force Aug. 14 and 15, 1927). L.N. *Tr. Ser.*, LXVIII, p. 407.

Allied Powers—Turkey. Treaty of peace, signed at Sèvres, Aug. 10 (Arts. 19 *ff*, 318-327). Ministère des Affaires Etrangères, *Traité de Paix entre les Puissances Alliées et Associeés et la Turquie du 10 août 1920*, p. 126 (Paris, Imprimerie Nationale, 1920); *A.J.I.L., Of. Doc.*, 1921, p. 273; *N.R.G., 3e sér.*, XII, p. 664. (This treaty was never brought into force.)

1921

France, Great Britain, Italy—Danzig, Poland. Agreement concerning hangars attributed to Danzig, signed at Danzig, Dec. 19. *N.R.G., 3e sér.*, XVII, p. 239, 242.

1923

British Empire, France, Italy, Japan, Bulgaria, etc.—Turkey. Convention on the régime of the Straits (Art. 2), signed at Lausanne, July 24. L.N. *Tr. Ser.*, XXVIII, p. 115; *N.R.G., 3e sér.*, XII, p. 392.

England, the Netherlands, Northwest Germany, Denmark, Sweden, Norway. Resolutions of the conference at The Hague on aerial service between above countries (adopted Nov. 9). Published in the *Compte-Rendu* of the conference.

France, Great Britain, Spain. Convention on the organization of the statute of the Tangier zone (Art. 3), signed at Paris, Dec. 18 (ratifications deposited May 14, 1924). Br. *Tr. Ser.*, No. 23 (1924), Cmd. 2203; *N.R.G., 3e sér.*, XIII, p. 246. L.N. *Tr. Ser.*, XXVIII, p. 541.

France, Great Britain, Italy, Spain. Agreement revising the convention on the organization of the statute of the Tangier zone, signed at Paris, July 25, 1928. L.N. *Tr. Ser.*, LXXXVII, p. 211.

1924

Universal Postal Convention (Art. 74), signed at Stockholm, Aug. 28. *N.R.G., 3e sér.*, XIX, p. 368; L.N. *Tr. Ser.*, XL, p. 73.

1926

Belgium, France, Great Britain. Agreement on customs arrangement relating to air traffic, signed at Paris, May 5. *N.R.G., 3e sér.*, XVIII, p. 533; I.C.A.N., *Of. Bul.*, No. 16, p. 23.

Ibero-American convention on air navigation, signed at Madrid, Nov. 1 (has not been ratified by a majority of the signatory states). *Gaceta de Madrid*, April 23, 1927; *R.J.I. de L.A.*, XI, p. 97.

1927

Germany, United States of America, Austria, Belgium, etc. Provisions for the conveyance of mails by air, adopted at the conference held at The Hague, Sept. 10. L.N. *Tr. Ser.*, LXXV, p. 9.

Germany, United States of America, Austria, Belgium, etc. Provisions concerning the transmission of air parcels, adopted at the conference held at The Hague, Sept. 10. L.N. *Tr. Ser.*, LXXV, p. 41.

International radiotelegraph convention and general regulations between the United States and other states, signed at Washington, Nov. 25. U. S. *Tr. Ser.*, No. 767.

1928

Inter-American convention on commercial aviation, signed at Habana, Feb. 20. *Sixth International Conference of American States, Final Act, Motions, Agreements, Resolutions and Conventions,* p. 97 (Habana, 1928); *A.J.I.L., Of. Doc.,* 1928, p. 124; *Droit Aérien,* 1929, No. 2, p. 255.

1929

Universal Postal Convention, signed at London, June 28 (Art. 74).

Universal Postal Union. Provisions concerning the transport of postal letters by air, signed at London, June 28. (Published by the International Bureau of the Universal Postal Union.)

Universal Postal Union. Provisions concerning the transport of parcels post by air, signed at London, June 28. (Published by the International Bureau of the Universal Postal Union.)

Convention of Geneva for the amelioration of the condition of wounded and sick of armies in the field (Art. 18), signed at Geneva, July 27. *Droit Aérien,* 1929, No. 4, p. 475-476.

Convention for the unification of certain rules relative to international transportation by air, and additional and final protocols, signed at Warsaw, Oct. 12. U. S. *Bul. Tr. Inf.,* No. 7, Sup.; *Droit Aérien,* 1929, No. 4, p. 646, 658.

BILATERAL TREATIES

1913

France—Germany. Exchange of notes on aerial navigation, signed at Berlin, July 26. *Journal Officiel de la République Française,* p. 7334 (Paris, Imprimerie Nationale, Aug. 12, 1913); *Reichsgesetzblatt,* 1913, No. 48, p. 601; *R.J.I. de L.A.,* 1913, p. 240; *N.R.G., 3e sér.,* VII, p. 643.

1919

France—Great Britain. Agreement between postal administrations for the conveyance of mails by aeroplane, signed at London, Sept. 10, and at Paris, Sept. 24. *B. & F. State Papers,* CXII, p. 724.

Great Britain — Netherlands. Agreement between postal administrations for the conveyance of mails by aeroplane, signed at The Hague, Oct. 29, and at London, Nov. 14. *B. & F. State Papers,* CXII, p. 757.

Great Britain — Switzerland. Provisional convention regulating aerial circulation, and additional protocol, signed at Bern, Nov. 6 (ratified Feb. 9, 1920). L.N. *Tr. Ser.,* I, p. 37, 43; I.C.A.N., *Of. Bul.,* No. 2, p. 6, 8; *R.J.I. de L.A.,* VI, p. 520-525; *N.R.G.., 3e sér.,* X, p. 132, 135; *B. & F. State Papers,* CXII, p. 775, 778.

France — Switzerland. Provisional convention regulating aerial circulation, and additional protocol, signed at Bern, Dec. 9 (ratified Feb. 1, 1920). L.N. *Tr. Ser.,* I, p. 29, 35; I.C.A.N., *Of. Bul.,* No. 2, p. 9, 11; *R.J.I. de L.A.,* VI, p. 525-529; *N.R.G., 3e sér.,* X, p. 137, 140; *B. & F. State Papers,* CXII, p. 1057, 1061.

1920

Estonia — Great Britain. Exchange of notes concerning commercial relations, dated July 20. *N.R.G., 3e sér.,* XV, p. 636.

Germany—Switzerland. Provisional convention regulating aerial circulation, and additional protocol, signed at Bern, Sept. 14 (ratified Dec. 28, 1920). L.N. *Tr. Ser.,* II, p. 331, 337; *R.J.I. de L.A.,* VI, p. 530-533; *N.R.G., 3e sér.,* XV, p. 674; *B. & F. State Papers,* CXIII, p. 1073, 1076.

Belgium—Great Britain. Agreement between postal administrations for the conveyance of mails by aeroplane, signed at London, Sept. 23, and at Brussels, Oct. 5. I.C.A.N., *Of. Bul.,* No. 11, p. 6; *B. & F. State Papers,* CXIII, p. 318.

Finland — Russia. Treaty of peace (Art. 8), signed at Dorpat, Oct. 14. L.N. *Tr. Ser.,* VI, p. 6 at 68; *N.R.G., 3e sér.,* XII, p. 37.

France—Great Britain. Provisional agreement on air navigation, dated Oct. 20. L.N. *Tr. Ser.,* II, p. 323; *B. & F. State Papers,* CXIV, p. 257.

FRANCE—GREAT BRITAIN. Exchange of notes relative to amendment of Art. 12 of above, dated London, Dec. 7, 1921, and Jan. 30, 1922. L.N. *Tr. Ser.,* XII, p. 449.

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Denmark—Sweden. Convention on air navigation, signed at Stockholm, Nov. 7 (ratified Jan. 16, 1923). L.N. *Tr. Ser.*, XIV, p. 95, 113 (English translation).

Poland—Rumania. Sanitary convention (Art. 21), signed at Warsaw, Dec. 20. *N.R.G., 3e sér.*, XX, p. 693.

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Belgium—Denmark. Agreement on aerial navigation, signed at Copenhagen, June 28 (ratified Aug. 15, 1923). L.N. *Tr. Ser.*, XX, p. 59, 72 (English translation); I.C.A.N., *Of. Bul.*, No. 7, p. 7; *R.J.I. de L.A.*, VIII, p. 101.

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Germany—Sweden. Provisional agreement on aerial navigation, and exchange of notes relating thereto, signed at Stockholm, May 29 (ratified Oct. 23, 1925). L.N. *Tr. Ser.*, XLVI, p. 121, 130 (English translation); I.C.A.N., *Of. Bul.*, No. 13, p. 19; *Reichsgesetzblatt* (1925), Part 2, p. 858; *R.J.I. de L.A.*, IX, p. 386.

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Austria—Italy. Convention on air navigation, and additional protocol, signed at Rome, May 11 (ratifications exchanged at Vienna, Jan. 28, 1930). L.N. *Tr. Ser.*, — (Reg. No. 2293); I.C.A.N., *Of. Bul.*, No. 16, p. 11; *Droit Aérien*, 1929, No. 3, p. 369; *Il Diritto Aeronautico*, VI (1929), p. 156, 161; *Raccolta Annotata della Legislazione Italiana* (1929), No. 6, p. 625, 629.

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Germany—Poland. Agreement on air navigation, signed at Berlin, Aug. 28. *Droit Aérien,* 1930, No. 1, p. 152.

Canada—United States. Exchange of notes on aerial navigation, signed at Washington, Aug. 29 and Oct. 22. U.S., *Executive Agreement Series,* No. 2; L.N. *Tr. Ser.,* — (Reg. No. 2229); *Droit Aérien,* 1930, p. 244.

Austria—Netherlands. Treaty on air navigation, signed at The Hague, Dec. 31. *Nederlandsche Staatscourant,* 1930, No. 6.

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Great Britain — Netherlands. Exchange of notes respecting recognition of certificates of airworthiness, dated at The Hague, Mar. 7 and May 5. Br. *Tr. Ser.,* No. 26 (1930), Cmd. 3618.

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